

*Works by LORD DAVIES*

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The Problem of the Twentieth Century  
Force

Suicide or Sanity?

Letters to John Bull and others  
("Robert the Peeler")

111  
NEARING THE ABYSS

*The Lesson of Ethiopia*

BY  
LORD DAVIES

RECEIVED

1936

1936

LONDON  
CONSTABLE & CO LTD  
1936

This volume contains numerous references to two previous works by the same author, *The Problem of the Twentieth Century* (Ernest Benn, 21s., first published August, 1930, revised edition March, 1934) and *Force* (first published September, 1934, revised edition May, 1935, Constable, 3s. 6d.). In this book the former is briefly cited as *The Problem*.

## PREFACE

“WHO in Europe does not know that one more war in the West and the civilisation of the ages will fall with as great a shock as that of Rome?” Ten years have elapsed since Mr. Baldwin, in these pregnant words, summed up the catastrophic consequences of another European conflagration.

In the meantime Europe has steadily marched towards the abyss. The Italo-Abyssinian conflict marks the most recent stage on this journey. Its lessons are clear and unmistakable; they point to the necessity for a reformed and revitalised League. But in these days, when every nation is feverishly rearming itself; when, despite the protests of the whole civilised world, the territory of one member of the League has been brutally over-run by the armed forces of another member; when Covenants, Pacts and Conventions have been cynically dishonoured and have become mere scraps of paper, it may seem futile to discuss the reform of the League or to suggest that it should be developed into an effective international authority.

The only excuse for doing so is the one advanced by Rousseau many years ago, when he wrote :  
“All that I do assume is understanding enough to



see their own interest and courage enough to act for their own happiness. If, in spite of all this, the project remains unrealised, that is not because it is Utopian, it is because men are crazy and because to be sane in a world of madmen is in itself a kind of madness."

Everyone knows that Europe is steadily marching to its doom. Everyone knows that the new armaments race can only end in another war. Everyone knows that we are within measurable distance of the abyss. Confronted by this appalling prospect, is it possible that even at the eleventh hour the peoples of this continent and their rulers may recoil before they hurl themselves over the precipice? Is it possible that in order to prevent an unparalleled disaster they may boldly face the problem of inaugurating the rule of law; that by combining together to strengthen the federal bond and by pooling their resources they may contrive to establish the basis of a durable peace? In existing circumstances this project may appear to be visionary and Utopian, but with the disastrous alternative staring us in the face we are compelled to explore every avenue. We dare not close our eyes to any possibility of escape from the shattering results of another war waged with the super-weapons which science has flung into the world during the last twenty-five years.

It is for this reason that I would appeal, at this critical moment, to every sane person, every man and woman of goodwill, everyone who has the

interests of his country at heart and is concerned for the continued existence of Western civilisation, to concentrate their thoughts and consecrate their energies in an attempt to find a practical solution of this urgent problem.

DAVIES.

*Plas Dinam,*  
*Llandinam.*  
*August, 1936.*



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# CHAPTER I

## THE CITY OF DESTRUCTION

*"There is no greater evil than anarchy."*—SOPHOCLES.

*"The wind of madness which has blown upon the world is not yet still."*—LE BON.

IT is recorded that when Solon was asked which was the best-protected city, he replied: "The city where all citizens, whether they have suffered injury or not, equally pursue and punish injustice."

If we compare the League of Nations to a city and regard its States Members as the citizens—although it may be true that the international community has not yet attained that high degree of development—nevertheless it follows that the best system of collective security is one in which all States, whether they have received injury or not, equally pursue and punish injustice.

One of the original inhabitants of this city is Citizen I. At the conclusion of a catastrophic period of violence and disorder, when the city was almost reduced to ruins, he joined other citizens in laying its new foundations and was one of the signatories of the new charter of incorporation, prescribing the rights, duties and obligations of citizenship. A few years afterwards I. induced his co-citizens to grant the status of citizenship to A.,



who had hitherto lived a somewhat secluded existence outside the city limits.

A. possessed an extensive estate which was only partially cultivated, whilst his coloured and undisciplined retainers were armed with primitive weapons. Sadly lacking the educational amenities, travelling facilities and modern equipment which other citizens regarded as the hall-mark of civilisation, A.'s candidature was looked upon unfavourably in several quarters. Hence the protests of Citizen B. and others who desired to postpone the grant of citizenship to A. until he should become more civilised and capable of carrying out those duties and responsibilities which citizenship involved. Despite these protests, however, A. was duly elected, and undertook to observe the laws and rules of the city.

Subsequently Citizen I., whose outlying estates bordered upon those of A., concluded with the latter a treaty of friendship in which it was agreed that, should any dispute arise between them, it should be settled by recourse to a peaceful procedure. A few years later, however, I. accused A. of plotting against him. There were several fights between their retainers on the borders of their respective estates. A. invoked the treaty of friendship and proposed a peaceful settlement, through the medium of the arbitrators provided for in the treaty. Citizen I. reluctantly agreed to this procedure, but in the meantime, whilst the arbitrators, after many postponements and delays, were considering the points at issue, he proceeded to mobilise his retainers and openly declared his

intention of attacking A. and seizing his estates. The other citizens, although fully realising the injustice which was about to be perpetrated upon A., pursued a policy of masterly inactivity, and did nothing until the last moment, when the attack was about to be launched.

Although for months I. had been busily engaged in transporting his retainers and munitions to his outlying estate, no attempt to restrain him was made by his fellow-citizens. On the contrary, all they did was to handicap A., who was badly in need of munitions, by refusing to sell him the arms and ammunition they manufactured in their private establishments. Citizen B., who also possessed outlying estates adjoining those of A., appointed a Committee from amongst the members of his household to advise him as to whether he would suffer any injury if I. annexed the estates of A. The Committee assured him that he would suffer no injury. Citizen F., whose home estate bordered upon that of I., gave assurances to the latter that he would not interfere if I. was willing to help him against G., who had recently relinquished his citizenship and resigned his seat on the City Council. It will be remembered that G. had played a leading part during the catastrophic period already alluded to, and was now reported to be rearming against F.

It will be observed that these complications arose owing to the fact that all the citizens were privately armed. Each controlled and manufactured his own weapons. Each hired his own retainers and men-at-arms. There was no police force at the disposal of the City Council to protect the city against attack

from outside, or to maintain order amongst the citizens. It is true that under the charter all the citizens had undertaken to join the hue and cry in pursuit of the thief or the murderer, whether they had suffered injury or not. Further, it was laid down that such action should be taken collectively. But if one of the citizens, either because he did not believe his outlying possessions were threatened, or because he wanted the assistance of the burglar against someone else, or for any other reason, refused to pursue and punish injustice, then the collective system was bound to collapse.

Further, according to the rules of the charter, no preventive or coercive action could be taken against the aggressor until the fight had actually begun, despite the knowledge that huge preparations for the attack were already in progress. On the eve of hostilities, however, a meeting of the City Council was summoned. Its members endeavoured by negotiation and conciliation to effect a settlement between I. and A. When these efforts proved to be unavailing, the Council appointed a committee of five citizens, who were charged with the duty of proposing an equitable settlement. Three out of the five, however, were themselves owners of outlying estates acquired by conquest, all of which might be affected directly or indirectly by any action taken by the Council. Consequently, the Committee could hardly be described as an impartial and disinterested tribunal. It is to be noted that so rudimentary was the organisation of the city that no permanent and impartial body existed to which disputes of this kind could be submitted for adjudica-

tion when the procedure of negotiation and conciliation had broken down. Citizen A. accepted the report of the Committee of Five. On the other hand, I. rejected it, and proceeded to invade the territory of A. Immediately a meeting of all the citizens was summoned, and they decided :

- (1) To denounce I. as an aggressor who had violated the laws and charter of the city.
- (2) To refuse to supply arms and munitions to I. and to lift the ban hitherto imposed upon the sale of arms to A.
- (3) To refuse financial assistance to I.
- (4) To refuse to sell certain things to I. or to buy anything from him.

Had they been determined to “pursue and punish injustice,” there were several other things which they had solemnly covenanted to do under the charter, namely :

- (1) That the City Council should recommend what armed assistance the citizens should be called upon to render to A., the victim of aggression.
- (2) That I. should be completely ostracised. No citizen would be allowed to hold any intercourse with him.
- (3) That no citizen should be allowed to sell any article to I., including coal, steel and oil.

Moreover, the charter permitted the expulsion of an aggressor from the city and the forfeiture of his status as a citizen. The citizens, however, mainly

at the instigation of Citizen F., decided not to take these measures against I.

In support of their decision to violate the terms of their charter, they advanced the following reasons :

First, that the chief captains amongst their retainers had given it as their opinion that I. could not possibly defeat A. and take possession of his estates for several years, and that in the meantime the measures they had already decided upon, which they described as sanctions, would suffice to bring about the financial collapse and bankruptcy of I. Despite the fact that in the past the prognostications of the captains had almost invariably been wrong, the citizens nevertheless accepted their advice, with disastrous consequences to A. and to the future maintenance of law and order within the city.

Secondly, in many quarters it was freely stated that because I. was a particularly pugnacious fellow who was on the verge of bankruptcy, having spent vast sums in arming all his retainers, he would probably retaliate by attacking Citizen B., and possibly other citizens as well, if all the sanctions in the charter were put into operation against him. And as the citizens were extremely suspicious and jealous of one another, each being intent upon safeguarding his own life and property, and had taken no steps to organise their retainers into a joint defensive force for the protection of the city, they easily succumbed to the threats and bluff of Citizen I.

Thirdly, it was unfortunate that a few months before I. proceeded to attack A., the major-domo

of Citizen F. had concluded a secret agreement with I. Its contents were not disclosed to the City Council, but it was believed that F. was prepared to allow I. to rob A. of his estate provided I. was willing to bring his retainers to the assistance of F. if the latter was attacked by ex-Citizen G.

These are some of the reasons advanced for the failure of the citizens to live up to the terms of the charter which they had mutually contracted and their collective obligations. In the past F. had always insisted upon the sanctity of the city charter, and the necessity of providing for the security of all its citizens. In fact, he had gone so far as to suggest on several occasions at meetings of the Council that a City Police Force should be organised for this purpose. However, on this occasion he refused to insist upon carrying out the terms of the charter, and gave his moral or immoral support to I., who had already been declared by the citizens to be an outlaw and a bandit.

Obviously, this was a short-sighted policy on the part of F., for two reasons. First, because if on some future occasion he should be attacked, he could not expect the support of all the other citizens; and, secondly, because the assistance of a citizen convicted of burglary, and whose estates are heavily mortgaged, is always bound to be extremely precarious and problematical. And because F. was not prepared to pursue and punish injustice in the case of A., he may have forfeited the assistance which other citizens were bound to have given him, and which he could have demanded in similar circumstances, if the terms of the charter had been

honourably adhered to. On the other hand, had F. joined wholeheartedly with other citizens in maintaining the laws of the city, there can be no doubt that I. would have been compelled to desist from attacking A., and the Council, by upholding its authority in the city, would have been in a much stronger position to afford protection to all its citizens, including Citizen F.

Subsequently the retainers of I. over-ran the estates of A., and finally took possession of them. This robbery, however, was only made possible because I. resorted to the use of poison gas, despite the fact that on several occasions the City Council had unanimously prohibited the employment of this weapon by the retainers of any citizen. I. had voted for these resolutions and was a party to the agreement, but in defiance of the Council and all his fellow-citizens he proceeded to asphyxiate and paralyse the defenceless retainers of A. But beyond making a few feeble protests, the City Council took no active steps to restrain him. Because they had suffered no injury themselves, the citizens refused to pursue and punish injustice. Consequently, so long as they are unwilling to recognise one supreme common interest—the administration of justice—they cannot expect to live in the best-protected city. On the contrary, they will miserably perish in the City of Destruction.

## CHAPTER II

### THE OLD ORDER VERSUS THE NEW

*"The old order changeth, and giveth place to new."*—  
TENNYSON.

THROUGHOUT the Italo-Abyssinian discussions at Geneva we must have been impressed by the constant struggle between two conflicting sets of ideas; between the old order and the new; between war as an instrument of national policy and a procedure of peaceful change; between the aggressor and the collective system; between imperialism and federalism; between anarchy and the rule of law.

Conflicting  
Policies.

Broadly, these were the issues involved.

Well may we exclaim with Dante :

"O Race of Mankind! What storms must toss thee, what losses must thou endure, what shipwrecks must buffet thee, as long as thou, a beast of many heads, strivest after contrary things."

The conflict at Geneva ended in a compromise between the old and the new order; between the pre-War and post-War conceptions of international relationships. But when it is a matter of life and death, when the "best protection" of the city is involved, when bold and swift action is imperative and risks have to be run, compromises are apt to

The  
Compro-  
mise.



spell defeat. If the League is to succeed in its mission as a collective instrument for the suppression of war, there can be no compromise with the aggressor. To do so is to court defeat or to become an accessory to the crime.

The New  
Standard  
of Con-  
duct.

The old order dies hard. What are the facts? At the conclusion of the greatest and most devastating war in history, the States Members of the League affixed their signatures to the Covenant. They solemnly undertook to maintain the rule of law and to act collectively against the aggressor from whatever quarter he might appear. Moreover, a few years afterwards they signed the Kellogg Pact,<sup>1</sup> and renounced war as an instrument of national policy. These proceedings could only mean that, so far as the signatories were concerned, their conduct in the past was to be no criterion of their behaviour in the future. In the past they may have dishonoured treaty obligations, seized and annexed territories and committed acts of aggression, but under the new dispensation these precedents were no longer to be regarded as valid, nor could they afford an excuse to any State Member of the League for taking the law into his own hands and, by force of arms, imposing his will upon his neighbours.

<sup>1</sup> The Kellogg Pact, alternatively known as the Briand-Kellogg Pact and officially entitled the Pact of Paris, was concluded in Paris on 28th August, 1928. It consists largely of a declaration renouncing war as an instrument of national policy, and has been signed by no less than 63 countries, including of course the U.S.A. whose Secretary of State, Mr. Kellogg, was one of its main instigators. Cf. J. T. Shotwell, *War as an Instrument of National Policy*, 1929, *passim.*, and Arnold Toynbee, *Survey of International Affairs*, 1928, pp. 1-47.

Under the old order the right of conquest was recognised, but under the new orientation it has ceased to exist. It follows that an act of aggression on the part of a State Member becomes a definite challenge to the new international regime, and to the governments and peoples whose representatives signed the International Magna Charta of 1919.

The struggle between the old and new conceptions is still in progress. It is not confined to Geneva; it is waged in every country between the supporters and opponents of the rule of law; between those who are prepared to stand by their treaty obligations and those who desire a return to the pre-War condition of international anarchy.

The war in Abyssinia has provided a test case around which the protagonists of both sides may range themselves. But the moment has not yet arrived when one of the contending parties can claim the victory. We do not know whether, as a result of this test case, the structure of the League will be completely destroyed, or whether a reformed and revitalised association of nations will spring into life at Geneva. But whatever the final result, it may be possible, in the light of the experiences of the last twelve months, to deduce certain lessons from the Italo-Abyssinian conflict. These will demonstrate, not only the existing flaws in the organisation at Geneva, but also, what is of far greater importance, the vital necessity for a supreme and common purpose which will govern and inspire the policy and actions of every member of the League.

The Test  
Case.

This purpose is to establish the "best-protected

city.” But such a city can only be constructed if its bastions and ramparts are founded upon equity and justice—in other words, if its citizens, whether they have suffered injury or not, are prepared to pursue and punish injustice. That is what Theodore Roosevelt once described as the peace of righteousness. And it is obvious that a righteous peace cannot be the offspring of a system which tolerates injustice. It follows that the supreme test of citizenship is willingness to pursue and abolish injustice in every sphere of human relationships, for in no other way is it possible to establish the “best-protected city.” This principle is incorporated in the common law of Great Britain, which insists not only upon equality in the sight of the law, but also upon the duty of every citizen to assist the policeman in the execution of his duty.<sup>1</sup> This injunction comes down to us from the old custom of hue and cry, when every able-bodied

<sup>1</sup> Every citizen is still obliged to come to the help of the police in England and Wales. (C. C. H. Moriarty, *Police Procedure and Administration*, 1933, p. 156: “In common law a constable is entitled to call on a bystander for assistance if such assistance is reasonably necessary, and the person so called is bound by law to assist him.”) Every citizen is also obliged to try to apprehend a person who has committed a felony, whether there is a constable on the spot or not. (*Ibid.*, p. 153: “A private person who is present when a felony is committed or a dangerous wound is given is bound by the Common Law to do his best to arrest the offender, and if he negligently allows such an offender to escape he will commit a misdemeanour.”) This practice is the modern equivalent of the old hue and cry. The hue and cry as such does not seem to have existed in Scotland, but the duty of the citizen to assist the police is now the same over the whole of Great Britain, the obligation having been laid down in a Statute of Queen Victoria.

person in the parish was under the obligation of joining in the pursuit of the thief and the murderer. Subsequently this civic duty was put into commission when it was devolved upon the sheriff and his posse, the night watchman and the Bow Street runner, and at a later stage upon the modern constabularies created under Sir Robert Peel's Police Act of 1829.<sup>1</sup> But although the latter became directly responsible for the maintenance of order and the suppression of crime, the original obligation expressed in the custom of hue and cry still remains, and any citizen who ignores it by refusing to lend his aid in the apprehension of the criminal or wrongdoer renders himself liable for a breach of the common law. Similarly it has been suggested that the same principle of mutual obligation should also be applied in the sphere of international relationships.

For instance, in 1918, before the conclusion of the War, a debate took place in the House of Lords on the project for a League of Nations. In the discussion which ensued Lord Parker, one of the Lords of Appeal, made the following observations: "There have been periods," he said, "in the history of nations when in the absence of legal tribunals, in the absence of an organised police force, the sense of mutual obligation, which lies at the root of every legal system, has been so strongly developed that an act of violence done to the person or property of one member of the community has been resented as a wrong to all its members. In such a case neutrality

Mutual  
Obliga-  
tion.

<sup>1</sup> Sir Robert Peel's Police Bill received Royal Assent on June 19th, 1829, and came into force three months later. For further details see Alwyn Solmes, *The English Policeman, 871-1935*, 1935, pp. 120 *et seq.*

is impossible. It is a disgrace, a crime. The hand of every man is against the wrongdoer. He becomes an outlaw. No one may feed him or succour him or assist him to escape. Everyone must join in his arrest and punishment." "To this strong sense of mutual obligation," Lord Parker went on, "we owed in this country what is known as the 'hue and cry,' long regarded as an effective deterrent against crimes of violence. From it arose on the other side of the Atlantic that system of communal justice which, however rough and ready, contributed so largely to the establishment of law and order in the western part of the American Continent. From it legal tribunals and an organised police force will readily develop. Without it no reign of law is possible."<sup>1</sup>

Lord Parker, in this historic speech, emphasises the point insisted upon by Solon—that the basis of all law and order, whether municipal or international, is the strong sense of mutual obligation in the community manifesting itself in the restraint of violence and transcending the boundaries of municipalities and States, whether great or small. This will to peace and the determination to secure justice will be reflected in the organisation of the international hue and cry, and must be supported by public opinion in all the co-operating States, each of which recognises that whether it has suffered injury or not it must rally in support of the supreme common

<sup>1</sup> Lord Parker of Waddington in the House of Lords, March 19th, 1918. (Hansard, Parliamentary Debates, House of Lords, 5th Series, Volume 29, pp. 499–510; Sir Alfred Zimmern, *The League of Nations and the Rule of Law*, 1918–1935, 1936, pp. 174 *et seq.*)

interest—the suppression of crime and the administration of justice.

This is the phase through which the League, representing fifty-eight States, is passing at present. In the international sphere the obligations of hue and cry are laid down in Article 16.<sup>1</sup> Clearly they are responsibilities which the Governments of all States have directly assumed, and consequently all the individuals who are citizens of these States are

The New  
Phase.

<sup>1</sup> The text of Article 16 of the Covenant is as follows :—

“ 1. Should any Member of the League resort to war in disregard of its covenants under Articles XII, XIII, or XV, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade and financial relations, the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State, and the prevention of all financial, commercial, or personal intercourse between the nationals of the Covenant-breaking State and the nationals of any other State, whether a Member of the League or not.

“ 2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval, or air forces the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

“ 3. The Members of the League agree, further, that they will mutually support one another in the financial and economic measures which are taken under this Article, in order to minimise the loss and inconvenience resulting from the above measures, and that they will mutually support one another in resisting any special measures aimed at one of their number by the Covenant-breaking State, and that they will take the necessary steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League.

“ 4. Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the representatives of all the other Members of the League represented thereon.”

indirectly involved. It follows that the latter, just as in the case of hue and cry, are all bound to give their moral support to the international authority in the execution of its duty—namely, to maintain order and compel the appearance of the aggressor or the defaulter before the bar of justice.

In the Italo-Abyssinian conflict we observe this embryonic stage in the development of the collective system when the sense of mutual obligation is beginning to manifest itself. Fifty-eight nations combined collectively to impose certain financial and economic restraints upon the aggressor which it was anticipated would so hamper him in his military operations in Ethiopia as to become decisive in the end, and thus the authority of the League would be vindicated.

Unfortunately these anticipations were not realized and the sanctions imposed have proved to be insufficient to prevent the Italian forces from over-running Abyssinia.

This is due to the fact that the testing time has been too short, because in order to become effective economic coercion must operate over a considerable period.<sup>1</sup> The Blockade of the Central Powers in the World War, which lasted for four and a half years, may be cited in support of this contention.

<sup>1</sup> "Ordinary financial and economic Sanctions do act and will act, as a rule, *slowly*." The Rt. Hon. Stanley Baldwin, House of Commons, 18th June, 1936 (Parliamentary Debates, House of Commons, Vol. 313, No. 105, Col. 1236).

"Clearly the financial Sanctions and the refusal of the League to accept Italian exports could not be immediately effective." The Rt. Hon. Anthony Eden, House of Commons, 24th February, 1936 (Parliamentary Debates, House of Commons, Vol. 309, No. 35, Col. 78).

Consequently it would be wrong to infer from the results so far obtained in the case of Italy and Abyssinia that the system of sanctions stands condemned, and that economic and financial restraints are entirely useless and valueless to deter nations from committing the crime of war. Because miscalculations have been made, and because the first experiment may have partially failed, that is no reason for proposing the abandonment of all sanctions and the elimination of Article 16 from the Covenant. On the contrary, this experience has only demonstrated the weak points in the sanctionist armour.

Sanctions  
not Con-  
demned.

These must be repaired and strengthened. They must be reinforced by a more vigorous and effective organisation of the hue and cry. Nevertheless, the fact remains that the sense of mutual obligation has been aroused and has asserted itself. Instead of destroying it, as the imperialist diehards and the protagonists of the old order suggest, let us foster and strengthen it until the collective will is prepared to take more effective and energetic measures for the protection of the city and its law-abiding citizens.

It will be observed that Lord Parker, in the speech already alluded to, predicted that from this strong sense of mutual obligation tribunals and police forces will readily develop.

Necessity  
for New  
Institu-  
tions.

That is precisely what has happened in all civilised communities. It is true that the period of evolution has been a gradual one, extending over centuries in Europe and over a relatively far shorter time in Western America. This process is still going on all over the world, and it is by no means completed in



any country, because it is the eternal conflict between anarchy and the rule of law. But as the sense of mutual obligation grows in intensity and volume, so the demand for tribunals and police forces will become more insistent, even in the international sphere. As we have seen, it has already invaded this domain, and in the future it will not be circumscribed by national frontiers. Moreover, this demand is stimulated by a growing and livelier appreciation of the horrors and devastation which are likely to occur if these institutions are not brought into existence as part of the permanent machinery of the League.

Further, we cannot help realising that the march of science, with its mechanical inventions, has accelerated the pace. What in the past may have seemed to be desirable, in the modern world has become a necessity. Mr. Winston Churchill writes : “ It was not until the dawn of the twentieth century of the Christian era that war entered into its kingdom as the potential destroyer of the human race.” <sup>1</sup>

Consequently in order to provide the most effective means for the best protection of the city, no time should be lost in putting the policing function into commission and expressing the rudimentary obligation of hue and cry in terms of institutions—tribunals and police forces—in order to save Europe and Western civilisation from the impending disaster.

A century and a half ago Kant pointed out that mankind would some day be faced with two

<sup>1</sup> The Rt. Hon. Winston S. Churchill, *The World Crisis* :  
*Vol. I* 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 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alternatives which he described as "The Empire of Right" and "The Great Graveyard of the Human Race." In the twentieth century the nations of Europe have to choose between these alternatives.

It follows that in making our choice we must be guided not only by our conceptions of what may be described as the laws of historical evolution as portrayed in the lives of individual nations, but also by what we conceive to be the dictates of necessity in the international arena.

The Time  
Factor.

For it is clear that, in comparison with the rate of development of the reign of law in European States, the process of international evolution will have to be accelerated in a last attempt—it may be a vain one—to save ourselves from an unprecedented and an unparalleled catastrophe, the complete destruction of Western civilisation.

Regarded from another angle, the evolution of law and order, especially in the relationships of communities and groups, is closely linked up with the idea of federalism, which represents the voluntary association of states or nations for certain purposes defined in the federal constitution. The strength and utility of the federal bond are expressed in the institutions created to carry out the common purposes and to safeguard the common interests of the communities who combine together to maintain the rule of law. This bond may be strong or weak, and the rate of its development may be rapid or slow, depending upon the volume and intensity of the public opinion in the co-operating communities which it links together. There is no reason to suppose that the growth of public opinion must

necessarily be slow, or that it may not be accelerated should circumstances demand a closer union amongst the States which are members of the confederation.

The most successful federal experiment is to be found in the history of the constitution of the United States. It will be remembered that, after a successful rebellion against Great Britain, thirteen independent and sovereign States formed themselves into a confederation. But after an experience which lasted only for a brief period—from 1782 to 1789—it was found that the confederate constitution would not suffice.<sup>1</sup> It became obvious that the institutions existing under this regime were not sufficiently strong or powerful to stand the strain, or to carry out the original intentions of its founders. Only seven years had elapsed when it became clear that the choice lay between a return to the old system of thirteen isolated and autonomous communities, or a federal authority equipped with those institutions—a legislature, a Court, an Executive and a centralised defensive force—which would ensure the solidarity and cohesion of the federal authority.

This decisive event in the history of a great community proves conclusively that the development of the federal idea or principle, may not, after all, be such a slow and gradual process as some people would have us believe.<sup>2</sup> The truth is it may be exceedingly rapid. It all depends upon vigorous leadership, the pressure of public opinion and the urgency of the necessity for reform. Given these three factors, there is no reason why the League

<sup>1</sup> See, *post*, chap. XI.

<sup>2</sup> See p. 129, n. 1.

should not be developed within the lifetime of the present generation into a federal authority which, even though it did not embrace the whole world, would at least include the majority of European States within the circle of its membership.

We live in a revolutionary age, an age of mechanical inventions, when space and distance have been annihilated, when the most devastating engines of destruction have been created. It is, however, an age in which the evolution of human and international institutions has not kept pace with the scientific achievements and material progress of mankind. In the domain of materialism the old order has been compelled to make way for the new. The horse has been supplanted by the motor-car, the express engine by the aeroplane, the big gun by the bomber, the shell by the bomb, the bullet by poison gas, land and sea forces by the squadrons of the air.<sup>1</sup> The protective screens—armies and navies—which have hitherto defended the civilian populations from the armed forces of the enemy will no longer afford effective protection. It follows that the pre-War international systems of the balance of power, the concert of Europe, diplomacy by conference, and all the other expedients of the old order must also be consigned to

Conclu-  
sion.

<sup>1</sup> There are, of course, two schools of thought in connection with this matter, one maintaining that air forces have completely superseded armies and navies, and the other that surface forces will still have an important part to play in the occupation and subjection of territory which may have been evacuated as the result of aerial bombardment. The fact is that only in another major encounter can the claims of either side be vindicated. The question is further dealt with in *The Problem*, chap. XII.

the scrap-heap. They must be replaced by federalism, the rule of law, and an international authority equipped with sufficiently powerful means—the combined resources of all the co-operating States—to establish the new order and to banish the threat of war from the confines of Europe.

## CHAPTER III

### THE VALIDITY OF THE COVENANT

*“To solve this great problem will require the concentrated effort of all the great nations in concert.”*—VISCOUNT GREY.

THE method and practice of pursuing and punishing injustice in the domain of international relationships are laid down in the Covenant of the League. Consequently, it is clear that one of the main issues involved at the outset of the Italo-Abyssinian conflict was the validity of the Covenant. How far have its obligations been honoured, and to what extent have they been ignored?

The  
Covenant.

It will be remembered that the following sanctions were imposed upon Italy :—

- (1) An embargo upon the export of munitions and arms; and
- (2) The imposition of financial and economic restrictions upon her commerce and trade.<sup>1</sup>

<sup>1</sup> By 2nd November the Co-ordinating Committee had received 51 replies regarding Proposal I (arms embargo), 51 regarding Proposal II (financial measures), 49 regarding Proposals III and IV (prohibition of importation of Italian goods and embargo on “key” exports to Italy), and 41 regarding Proposal V (mutual support) from the 56 Member States which it had approached. (*Journal des Nations*, 3rd and 4th November, 1935.) All the replies were in the affirmative, and indicated the willingness of the Governments concerned to put into operation the measures recommended by the Co-ordinating Committee.

On the other hand, no steps were taken to implement the mutual obligations<sup>1</sup> of Article 16<sup>2</sup> providing for :—

- (1) The imposition of an embargo upon the export of coal, steel and oil to Italy.
- (2) The severance of all intercourse with the aggressor nation, or what is described as the diplomatic sanction.
- (3) Recommendations by the Council to the co-operating States Members regarding military assistance to the victim of aggression, and
- (4) The permissive sanction of expulsion from the membership of the League.

Collective  
Will and  
Organisa-  
tion.

No one, therefore, will suggest that the provisions of the Covenant have been carried out in their entirety. Is this lamentable result due to unwillingness to face risks, culminating in a refusal on the part of States Members to honour their covenanted and mutual

<sup>1</sup> It will be remembered that a correspondence took place in September and October 1935 between the British and French Governments regarding naval support in the event of an unprovoked attack on the British Fleet in the Mediterranean. Subsequently, a questionnaire on the same subject was addressed by the British Foreign Office to the Governments of the other Mediterranean Powers—Greece, Spain, Turkey, and Jugo-Slavia. Subject to certain minor restrictions, the replies were affirmative, and as a result arrangements for joint action in the event of a military reprisal by the aggressor nation were concluded. (See, further, League of Nations Co-ordination Committee, Documents 108, 108A, *et seq.*, and Chapter VII *post.*)

<sup>2</sup> The full text of Article 16 is to be found in Note 1 on p. 15 *ante*.

obligations, or to inherent defects in the constitution and organisation of the League? In other words, was it the collective motive-power or the collective machinery which was lacking, in order to ensure that justice should prevail and the crime of war be prevented? The truth is that the collective will and the institutions through which this will could most effectively function were both lacking.

A man invents a machine. But the machine will be useless unless he also possesses sufficient fuel or motive-power to drive it. Conversely, there may be an abundance of motive-power, but if there is no machine, or if its parts are deficient or defective, the motive-power will be entirely wasted. Similarly, human institutions may be created to achieve specific purposes. But unless there also exists the will-power to make them effective, they will perish of inanition. On the other hand, although the will-power may be generated, it may be thwarted in an attempt to achieve its purpose, because the necessary institutions and appropriate organisations have not been created, and are not ready to function when a crisis has arisen. Thus it is impossible to separate the will-power and the institutions, any more than the motive-power and the machine. Both are indispensable, both are complementary, and in every sphere of human society institutions and organisations are the concrete expressions of the collective will and determination to achieve definite results.

Now let us apply these propositions to the existing international situation. We know that every European ruler or statesman, with the possible



Organisa-  
tion of  
Peace  
versus  
Organisa-  
tion of  
War.

exception of Mussolini, has declared for peace.<sup>1</sup> We are constantly being assured that the nations desire peace. Therefore, if these manifestations mean anything, we must assume that the will or motive-power to achieve peace exists, but that it is unable to express itself because the appropriate institutions and organisations are non-existent. Clearly, there can be no durable peace unless it is founded upon justice, which involves the creation of a peaceful procedure to effect changes in the public law and to revise treaties. Further, the collective will must be organised in such a way that the law can be upheld and enforced. At present, these institutions do not exist, with the result that the collective will to peace

<sup>1</sup> Dictators and representatives of democratic governments equally emphasise their desire for peace. A few examples will prove this thesis :

*Mr. Baldwin* : "The fight [for peace and the League of Nations] is worth it, and it is a fight that this country has been engaged in for some years and is engaged in now, and will continue in for centuries if need be" (*The Times*, 25th March, 1935).

*M. Laval* : "Our country does not fear war, as I have said at Geneva, but it hates it" (*The Times*, 14th April, 1936).

*M. Blum* : "The Front Populaire Government . . . will make every effort to establish real security in the world, a security based on 'disarmed peace'" (*Manchester Guardian*, 8th May, 1936).

*Herr Hitler* : "The National Socialists . . . have a gigantic programme at home. That obliges us to seek peace and friendship with the rest of the world" (*The Times*, 19th June, 1934).

Even Signor Mussolini himself felt obliged to express similar intentions in his speech in Rome, 27th October, 1930 : "Let it be clear, however, that we are arming ourselves spiritually and materially in order to defend ourselves, not in order to attack. Fascist Italy will never take the initiative of war" (George Seldes, *Sawdust Caesar*, 1936, p. 385).

is thwarted and balked. The inevitable consequence is that nations, instead of preparing for peace, are preparing for war. Despite all the peace oratory of statesmen and their reiterated pacific intentions, despite the genuine desire of their peoples for peace and their abhorrence of war, every Government in Europe is rearming as rapidly as possible. And in the process of preparing for war there is no lack of machinery and organisation—War Offices, Admiralties and Air Ministries—through which the will to war can assert itself.

Of course, there are war-mongers in every country. In Europe, at the moment, they may be in the minority, but when the crisis comes the minority will be able to set the war machine in motion. Why? Because all the instruments are ready, the timetables have been prepared in advance, the fuse is set, the inevitable explosion is bound to occur, sooner or later.

On the other hand, the collective will to peace is handicapped from the very start, because it is deprived of those very institutions and organisations, both moral and physical, through which it can make collective action effective. It is dogged by uncertainty as to what, if any, collective measures will be taken in the event of aggression or default.

The course of events in the Italo-Abyssinian dispute exemplifies this thesis. Let us suppose, for example, that before this dispute arose the League had been equipped with an Equity Tribunal and an International Police Force. Had these institutions been brought into existence before the crisis arose, it is reasonable to assume that the collective will

Conclu-  
sion.

would have functioned with far greater effect, because the creation of these institutions would have expressed, in advance, the clear intention and determination on the part of the members of the League that the collective will should assert itself and should prevail. The validity of the Covenant, as an instrument for the prevention of war, would then have been vindicated. That, it is suggested, is one of the lessons to be deduced from the recent conflict between Italy and Abyssinia.

## CHAPTER IV

### THE BI-LATERAL PACT BETWEEN ITALY AND ABYSSINIA

*"To no one will we deny justice, to no one will we delay it."*  
—MAGNA CHARTA.

*"Delays have often been more injurious than injustice."*—  
WILLIAM PENN.

It will be remembered that in 1928 a bi-lateral pact, or treaty of non-aggression, was entered into between Italy and Abyssinia, for the purpose of cementing the friendly relations existing between the two countries. It will also be remembered that in 1923, when Abyssinia applied for membership of the League, her claims were sponsored by the Italian Government and supported by France. On that occasion the representative of Italy, Count Bonin Longare, said : <sup>1</sup>

Abys-  
sinia's  
Entry  
into the  
League.

"Abyssinia's request constituted a tribute to the League of Nations. . . . He had always thought . . . that the request of Abyssinia for admission should be welcomed and considered in a friendly spirit, in order to pave the way for favourable developments . . . The Abyssinian Government would no doubt appreciate the assistance which the League of Nations could give it in its fight against slavery, and would

<sup>1</sup> *Records of Fourth Assembly, 1923, Sixth Committee,* pp. 18-19.

thus prepare itself to become an ever more active and effectual pioneer of civilisation in central Africa."

He was followed by M. Henry de Jouvenel, who, speaking on behalf of the French Government, endorsed the views of his Italian colleague.

"Abyssinia," he declared, "was at one and the same time a State and a Nation in the course of evolution, and neither that State nor that Nation should be allowed to disappear from the surface of the earth, as it fulfilled the functions of a guide. . . . Any delay in the admission of that country might prejudice the cause of peace and the prestige of the League. If an incident were to take place within the coming year on the frontiers of Abyssinia, and it was settled by force, the League would be blamed for such recourse to force because it failed to come to a decision in time. . . ." <sup>1</sup>

On the other hand, the representatives of Great Britain urged the postponement of the admission of Abyssinia until the latter was better fitted to assume those responsibilities which membership of the League implied. For instance, Abyssinia must furnish effectual guarantees in regard to the questions of slavery and the importation of arms and ammunition.<sup>2</sup> Later on, however, a compromise solution was accepted. A declaration signed by the Ethiopian representatives regarding the above questions was considered as a sufficient guarantee to justify the acceptance of Abyssinia as a State Member of the

<sup>1</sup> *Ibid.*, p. 20.

<sup>2</sup> *Ibid.*, p. 15.

League, and accordingly she was admitted at a Plenary Session of the Fourth Assembly.<sup>1</sup>

But in 1925, within two years of her admission, we find Great Britain and Italy exchanging notes regarding their respective economic spheres of influence in Abyssinia without any reference to, or consultation with, the Ethiopian Government. It was only natural that the latter should feel aggrieved. Here was an arrangement entered into between two of the Great Powers, both States Members of the League, partitioning between them economic spheres within the territory of an independent and sovereign State, which was also a State Member. Abyssinia, after protesting to both the British and Italian Governments, appealed to the League against this high-handed action, which was obviously contrary to all the principles of equality of status postulated in the Covenant. Unfortunately the League failed to administer a rebuke to either of the two Great Powers, and contented itself with taking note of the Abyssinian protest, which was included in the official Treaty Series.<sup>2</sup>

Economic  
Spheres in  
Abyssinia.

It is not surprising, then, that Abyssinia's sponsor who had introduced her into the League should, five years later, conclude a pact of non-aggression with the Ethiopian Government, or what was humorously described as a treaty of friendship.<sup>3</sup> Abyssinia

Treaty of  
Friend-  
ship.

<sup>1</sup> *Records of Fourth Assembly, 1923, Plenary Meetings*, pp. 124-125.

<sup>2</sup> *League of Nations Official Journal*, 1926, pp. 1517 *et seq.* *League of Nations Treaty Series*, Volume L, pp. 282 *et seq.*, especially p. 282, note 2.

<sup>3</sup> Signed 2nd August, 1928. *British and Foreign State Papers*, 1928, Part I, Vol. CXXIX, pp. 1 *et seq.* (Official Title of the Treaty: "Treaty of Amity, Conciliation and Arbitration between Abyssinia and Italy.")

must be killed by kindness : she must be strangled and absorbed peacefully. She must be seduced from the arms of other Great Powers who would embrace her. She must be lulled into a false sense of security, and other nations must be persuaded of the pacific intentions of the Italian Government. Then why not enter into a treaty of amity proposing the pacific settlement of all disputes which may arise between the two nations? And should this policy of peaceful penetration turn out to be unsuccessful, then it could always be replaced by that of annexation by force. The mailed fist could be substituted for the velvet glove.

The bi-lateral pact of 1928 provided for the following : According to Article 1, there was to be "constant and perpetual friendship between both States." Neither State should undertake any action directed against the independence of the other (Art. 2). Furthermore, the parties undertook to assist one another in developing and promoting their mutual trade (Art. 3). Any dispute between the two States which could not be settled by the usual diplomatic methods was to be submitted to a procedure of conciliation and arbitration "without having recourse to force of arms" (Art. 5). The treaty was concluded for twenty years (Art. 7).

The Pact  
and the  
Covenant.

But when Signor Mussolini reversed his policy and decided to conquer Abyssinia, this Pact not only became inoperative but developed into a positive danger to the Emperor and his people. It weighted the scales against him, because it provided the members of the League with an excuse for doing nothing. The arbitration proceedings were pro-

crastinated and delayed, but so long as they were in progress it was maintained that there was no necessity for the League to intervene. The following facts may be cited in support of this thesis :

On 3rd January, 1935, the Ethiopian Government sent an appeal to the League, formally based on Article 11 of the Covenant, just in time to be considered by the Council Meeting on 11th January. But as the Members of the Council were not anxious to deal with this dispute, they advised direct negotiation between the parties. The Ethiopian Government, in response to this appeal, and " finding that the Italian Government, like itself, is desirous of conciliation," agreed to the postponement of the discussion of its request until the next session of the Council.<sup>1</sup> After two more months had elapsed, crowded with negotiations between the parties concerning the delimitation of a neutral zone in the disputed area of Wal-Wal, the Abyssinian Government again requested a full investigation and consideration of the dispute, invoking Articles 10 and 15 of the Covenant in a note on 7th March, 1935.<sup>2</sup>

The Italian Government replied that Article 15 could not be applied in this particular case, in view of the fact that both parties had agreed, by an exchange of notes on 19th January, to submit this dispute to the procedure laid down in Article 5 of the Italo-Abyssinian Treaty of 1928.<sup>3</sup> At the Stresa Conference no one dared broach the subject to Mussolini, in spite of the fact that the British

<sup>1</sup> League of Nations Doc. C. 230, M. 114, 1935, VII, p. 10.

<sup>2</sup> *League of Nations Official Journal*, 1935, p. 572.

<sup>3</sup> *Ibid.*, p. 573.



delegation had brought their East African expert with them. Moreover, at the subsequent Extraordinary Meeting of the League Council in April,<sup>1</sup> in order not to have the matter discussed it was decided unanimously to exclude this subject from the agenda inasmuch as Italy had agreed to submit the dispute to a Committee of Conciliation. Yet again Italy used the method afforded to her by the existence of the bi-lateral treaty for further dilatory tactics. By a note on 14th April, she excluded the interpretation of the frontier treaty of 1908 from submission to the Conciliation Committee, reserving this question to the Boundary Commission provided for in this treaty,<sup>2</sup> and nominated Count Aldrovandi-Marescotti, former Ambassador in Berlin, and M. Montagnani, Counsellor of State, as her arbitrators on this commission.<sup>3</sup> Four days later the Abyssinian Government nominated Professor de la Pradelle and Professor Pitman Benjamin Potter.<sup>4</sup> Italy at once raised objections to the nomination of foreigners by Abyssinia, the former arbitrator being of French, the latter of American nationality.<sup>5</sup>

Finally it was not until nine months after Abyssinia had first appealed to the League for its intervention that the Council seriously began to tackle the issues involved in the dispute.

Evasion  
and Delay.

These facts clearly prove that in the initial phases of the conflict the machinery of the League remained

<sup>1</sup> *Journal de Genève*, 17th April, 1935.

<sup>2</sup> *Le Temps*, 19th April, 1935.

<sup>3</sup> League of Nations Monthly Summary, May 1935, p. 111.

<sup>4</sup> *The Times*, 18th May, 1935.

<sup>5</sup> *Manchester Guardian*, 18th May, 1935.

idle and inactive. It is true that spasmodic efforts were made at Geneva to expedite the arbitral proceedings under the Pact.<sup>1</sup> The fact, however, that the initiative and responsibility had been assumed by the parties directly concerned blocked League intervention during the early stages of the dispute, and provided those States Members who were willing to give Mussolini a free hand with a pretext for dilatoriness and delay.

Meanwhile, under the cloak of these negotiations and arbitral activities, warlike preparations on a vast scale were being undertaken by Italy, and as week after week, month after month passed she piled up her munitions and commitments in East Africa. Whilst the Council shunned the issue and remained hesitant and irresolute, both sides armed, and Mussolini made violent and uncompromising speeches. On 18th May the Italian Minister for Finance announced in the Chamber that already the cost of the dispute to Italy was 620 million lire

<sup>1</sup> At its meeting on 25th May, the Council imposed certain time limits with the object of expediting the conciliation procedure. It was resolved, for instance, that the Council should meet unless the four arbitrators had reached agreement by 25th July regarding the appointment of a fifth. It was further decided that a meeting of the Council should be held in the event of the procedure of conciliation and arbitration not having resulted in a settlement by 25th August (League of Nations Monthly Summary, 1935, p. 112). At a meeting of the Council on 1st August, the parties were requested to communicate the results of the conciliation procedure not later than September 4th (*Times*, 5th August, 1935). The parties duly submitted a report to the Council intimating that no responsibility for the Wal-Wal incident attached to either of the Governments concerned (*Journal des Nations*, 5th September, 1935).

(approximately £10,000,000).<sup>1</sup> Consequently, when at length the League did intervene, the die had already been cast. Having spent enormous sums upon this military adventure, it became more and more difficult for Mussolini to recede and renounce the undertaking.

Conclusion.

Had there been no bi-lateral pact, and if the arbitrators had never been appointed by the disputants, the Council of the League, when in the early months of 1935 it was confronted by the threat of war, would have been compelled to exercise its responsibilities under Article 11<sup>2</sup>—before, not after, the military preparations and time-tables had begun to operate. Consequently, the treaty of friendship, instead of facilitating a peaceful settlement and strengthening the hands of the League, as no doubt the protagonists of non-aggression pacts would have us believe, became a positive hindrance to prompt and effective collective action, and only played into the hands of the aggressor.

This unfortunate experience should stand forth as

<sup>1</sup> Freda White, *The Abyssinian Dispute*, p. 38; cf. *The New York Times*, May 21st, 1936, which gave the total amount spent or appropriated from the beginning of 1935 as 12,080,500,000 lire.

<sup>2</sup> It should, of course, be noted that at present the value of Article 11 is largely vitiated by the unanimity rule, as obviously the potential aggressor could frustrate action by recording an adverse vote. The need for changing this absurd state of affairs is now receiving wide attention, and was referred to by M. Blum in the Chamber of Deputies on 23rd June. "The prevention of aggression by Article 11 of the Covenant," he said, "is at present paralysed by the rule of unanimity. It is absurd that guilty parties should be able to veto preventive action. The French Government will propose to end this state of things" (*The Times*, 24th June, 1936).

a warning against all bi-lateral treaties and regional pacts of this character. They are a "trap for the innocent and a signpost for the guilty," because, in effect, they only detract from the authority of the League, and tend to rob it of the collective responsibility for the suppression of war which, under the Covenant and Kellogg Pact, its members have solemnly agreed to assume.

## CHAPTER V

### NECESSITY FOR AUTOMATIC SANCTIONS

*"The laws are good only when the legislator has so ordered  
it that equity and force are never separated from each other."*—  
SUN TUNG-SHAN.

SIGNOR MUSSOLINI, following the example of Japan, gambled upon the uncertainty of any collective action being taken by the members of the League under Article 16.<sup>1</sup> It will be remembered that in the case of the Sino-Japanese conflict the Council contented itself with the appointment of an Equity Tribunal or Commission composed of impartial and disinterested persons—the Lytton Commission<sup>2</sup>

to investigate and report upon the issues in dispute between these two countries. But on that occasion, mainly at the instigation of Great Britain, Article 16 was ignored and no sanctions were imposed upon the aggressor. Consequently it might be argued that this Article had become a dead letter, and there is, therefore, some justification for Signor Mussolini's complaint that the League was carrying out its first

<sup>1</sup> The text of Article 16 is reproduced on p. 15 (n.).

<sup>2</sup> It should be noted, however, that the Lytton Commission cannot be regarded as an Equity Tribunal in the sense now so widely advocated, particularly by the New Commonwealth Society. It did not exist as a permanent and integral part of League machinery, but was hastily called into being on the spur of the moment. See further, p. 24 (n.).

sanctionist experiment upon Italy.<sup>1</sup> Moreover, the avowedly antagonistic policy in regard to sanctions consistently pursued by Great Britain ever since the defection of America from the League, especially her refusal at the Disarmament Conference to accept the principles underlying the French proposals for an International Police Force, could only have strengthened the belief on the Continent that the provisions of Article 16 were not to be taken too seriously. When, however, the Italo-Abyssinian crisis became acute, Great Britain suddenly reversed her policy. In a few months she became the champion of sanctions.

In his speech to the Assembly, the new Foreign Secretary, Sir Samuel Hoare, proposed adherence to the Covenant "in its entirety,"<sup>2</sup> which could only mean that Article 16 should be honoured in its entirety. Why this abrupt and bewildering change? Was it that British interests in East Africa demanded the suppression of Mussolini's adventure against Abyssinia? Was it that military unpreparedness to meet single-handed a possible attack upon her African territories compelled Great Britain to support the collective system? Was it due to the appointment of a new Foreign Secretary who had persuaded the Cabinet that Great Britain's ultimate security could only be safeguarded by taking joint action

Great  
Britain  
Reverses  
Her  
Policy.

<sup>1</sup> Speaking in the Italian Chamber in December, 1935, Signor Mussolini said, "The penal code of the League has no past because during sixteen years it has never been applied in cases infinitely more serious and circumstantial than ours" (*The Times*, 9th December, 1935).

<sup>2</sup> *League of Nations Official Journal*, 1935, *Special Supplement*, No. 138, p. 46.

with her co-signatories at Geneva in upholding the Covenant against an aggressor from whatever quarter he might appear? Or was it due to disinterested anxiety on behalf of a fellow-member of the League whose existence and territory were threatened by the armed forces of a voracious and bloodthirsty dictator? Probably all these factors contributed to bring about the decision that sanctions should be applied, and that Article 16 should no longer be regarded merely as an academic proposition. It is tragic that this decision had not been reached and announced to the world nine months earlier, when the dispute between Italy and Abyssinia was in its embryonic stage.

Vacilla-  
tion and  
Uncer-  
tainty.

But at that moment Sir John Simon held the reins at the Foreign Office.<sup>1</sup> Did he fail to warn Italy of the consequence of an attack upon Ethiopia, and, if so, do these vital questions of policy, which affect the future safety of our country and the peace of Europe, depend merely upon the personal views and eccentricities of the individual who happens for the time being to occupy the position of Foreign Secretary?

The clue to Sir John Simon's attitude in January 1935 is to be found in a speech which he delivered in the House of Commons in 1934. This is what he said on that occasion: "It is not the Anglo-Saxon habit to make defined engagements for undefined circumstances."<sup>2</sup> The undefined circumstances in this case were the defined circumstances of the Sino-

<sup>1</sup> Sir John Simon held office as Secretary of State for Foreign Affairs from September 1931 to June 1935.

<sup>2</sup> 6th February, 1934 (Hansard, Commons Debates, 5th Series, Vol. 285, Column 995).

Japanese conflict, to which the provisions of the Covenant should have been applied by all its co-signatories. But the speech of the Foreign Secretary made it clear that Great Britain was not prepared, in advance, to regard as binding the procedure laid down and the commitments defined in the Covenant when the moment had arrived for applying them to the circumstances of a particular case. In effect, it was a repudiation of our mutual and collective obligations as a member of the League.

Unfortunately the same policy was again pursued in the early months of 1935, when the Italo-Abyssinian dispute was in its incipient stages. Consequently the other members of the League were left guessing as to what action, if any, Great Britain was likely to take.

Obviously this is the kind of uncertainty which makes war certain, because if we reserve our final decision until the last moment, we destroy the deterrent effect which collective action of any kind is intended to produce. In other words, we court disaster by encouraging the aggressor and the gambler to believe that we shall take no steps to honour our commitments.

Surely this was the lesson of 1914, because everyone knows that the War might have been prevented, or at least postponed, had Great Britain unequivocally informed the Central Powers what action in accordance with her treaty obligations she proposed to take in the circumstances which had arisen. On that occasion our intervention came too late to prevent war, and if, pursuing the advice of Sir John Simon, we still cling to the grand old Anglo-Saxon



merely punitive, it must be organised in advance of the crisis, and in order to exercise the maximum deterrent effect it must be automatic in its operation. Consequently the sanctionist plans should be scientifically worked out by experts and technicians and endorsed by the League before, not after, the act of aggression has actually been perpetrated.

Expert  
Commit-  
tees.

What happened at Geneva when fifty nations decided to honour some of their obligations under Article 16? <sup>1</sup> Expert Committees <sup>2</sup> had to be

<sup>1</sup> Only three League members—Albania, Austria and Hungary—dissented expressly from the decisions of the Assembly (*League of Nations Official Journal*, 1935, pp. 113–114).

<sup>2</sup> The Co-ordinating Committee appointed a smaller Sub-Committee of eighteen members on 11th October (*League of Nations Official Journal, Special Supplement*, No. 145, p. 13).

The Committee of Eighteen appointed various Sub-Committees :—

- (1) Sub-Committee for Financial Measures.
- (2) Sub-Committee of Military Experts (*O. J. Special Supplement*, No. 145, p. 34).
- (3) Sub-Committee on Economic Measures.
- (4) Sub-Committee on the organisation of Mutual Support.
- (5) Sub-Committee of Legal Experts (*O. J. Special Supplement*, No. 145, p. 659).
- (6) Committee of Experts created to Follow the Application of Sanctions. (*O. J. Special Supplement*, No. 146, p. 350).
- (7) Committee of Experts for the Technical Examination of the Conditions Governing the Trade in and Transport of Petroleum (*O. J. Special Supplement*, No. 145, pp. 9 and 43).

Most of these Committees appointed special sub-committees, especially drafting committees. (See especially *O. J. Special Supplement*, No. 145, pp. 108, 121, 132.)

The Sub-Committee on Economic Measures went further, and, besides the drafting sub-committee, nominated sub-

## CO-ORDINATION COMMITTEE

НЕМЦ.Л.Н.Б.У.М. ДО М.Н.Л.Т.Л.М.А.О.О.

appointed October 11th, 1935.

Sub-Committee for Fiscal Measures app. Oct. 11, 1935	Sub-Committee of Military Ex- perts app. Oct. 11, 1935	Sub-Committee on Economic Measures app. Oct. 14, 1935	Legal Committee app. Oct. 14, 1935	Sub-Committee on the Organization of mutual Support app. Oct. 14, 1935	Committee of Experts created to follow the application of S.I.C. tations app. Nov. 6, 1935	Office of Experts to study Questions relating to Petroleum app. Jan. 22, 1936
Drafting Committee app. Oct. 12, 1935	Sub-Com- mittee on Agriculture app. Nov. 4, 1935	Transit Sub-Com- mittee app. Nov. 4, 1935	Contracts Sub-Com- mittee app. Nov. 4, 1935	Drafting Sub-Com- mittee app. Nov. 4, 1935	First Sub- Committee (Proposal II) app. Nov. 27, 1935	Sub-Com- mittee on Transport app. Feb. 3, 1936
Drafting Committee app. Oct. 17, 1935	Sub-Com- mittee on Agriculture app. Nov. 4, 1935	Transit Sub-Com- mittee app. Nov. 4, 1935	Contracts Sub-Com- mittee app. Nov. 4, 1935	Drafting Sub-Com- mittee app. Oct. 17, 1935	Second Sub-Com- mittee (Proposals I, III, IV) app. Nov. 27, 1935	Sub-Com- mittee on Supply and Con- sumption app. Feb. 3, 1936
						Geographical Sub-Com- mittee app. Nov. 27, 1935

appointed at a moment's notice to work out the implications of an embargo upon the export of arms to Italy and the imposition of financial and economic sanctions upon the aggressor.

These Committees were compelled to work almost day and night under high pressure; they were forced to invade new territories which had been only partially explored and to improvise plans on the spur of the moment. The marvel is that they performed their tasks so expeditiously. It is clear, however, that there was little time for the investigation of many difficult problems which demanded the most careful scrutiny and research in order to ensure that the measures taken would be the most effective, and that the burden of sanctions would be equitably and fairly distributed amongst the fifty odd nations<sup>1</sup> which combined to impose them.

In the case of oil, for instance, the investigations dragged on for weeks and months, with the result that the aggressor utilised the breathing-space thus afforded him in purchasing and storing vast stocks, so that the immediate value of this sanction—even had it been finally imposed—would have been seriously diminished.

On the other hand, the lessons to be learnt from the proceedings and findings of the Expert Com-

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committees on clearing agreements, transit and contracts (*O. J. Special Supplement*, No. 146, p. 63).

Altogether nineteen sub-committees were working under the supervision of the Committee of Eighteen.

The table on p. 45 gives a complete survey.

<sup>1</sup> Later Egypt, although not a member of the League, agreed to join "in principle" in the application of sanctions (*Journal des Nations*, 13<sup>th</sup> November, 1935).

mittees are invaluable, not only on account of the experience gained, but also because they represent the first attempt in the organisation of sanctions.

Moreover, it is the first occasion when the League has asserted itself as an international authority. From this initial step, and with this valuable experience as a guide, it should be feasible to work out practical schemes for the imposition of economic and financial sanctions which in future can be imposed upon any disturber of the peace.

Future  
Organisa-  
tion of  
Sanctions.

These tasks should hereafter be entrusted to a Sanctions Section of the Secretariat at Geneva, composed of experts charged with the duty of framing a practical scheme or schemes which would be applied impartially and automatically against the aggressor, whoever he may be. It is clear that uncertainty as to what is going to happen in the event of aggression or default is fatal to the establishment of any reign of law. When warlike preparations are in progress, the League machinery of negotiation and conciliation should at once be brought into play. Should it fail to promote an amicable settlement, the dispute should automatically and without delay be referred to an Equity Tribunal in the case of political issues and to the Permanent Court of International Justice in the case of juridical disputes. The State which ignores the existence of these institutions, or their findings, and resorts to war declares itself by its own act to be an aggressor. Consequently the automatic sanctions already agreed upon, and incorporated in a code of policing regulations, would at once become operative. Thereafter the aggressor could not complain that he

was being experimented upon, or that he had not been warned in advance of the consequences of defying the rule of law.

Change  
and  
Chance.

The failure of the League to prevent the Italo-Abyssinian conflict reminds us of Rousseau's dictum that "Every community without laws and without rulers, every union formed and maintained by nothing better than chance, must inevitably fall into quarrels and dissensions at the first change that comes about."<sup>1</sup> In this case the change was due to Mussolini's repudiation of the Covenant, the Kellogg Pact and the 1928 Treaty of Friendship with Abyssinia. The prospect of bankruptcy and the necessity for diverting the wrath of his people from himself into other channels no doubt compelled him to embark upon this change. In the meantime the other members of the union had left everything to chance; the appropriate institutions—an Equity Tribunal and the organisation of sanctions culminating in the establishment of an International Police Force—were both lacking. No sanctionist plans or time-tables had been prepared in advance, and up till the last moment the members of the union were more concerned to evade their responsibilities than to pursue and punish injustice. When at length action was forced upon them, the success of the enterprise was also largely a matter of chance, because it lacked the elements of vigour and determination. The League is based upon the principle of federalism, but federalism can only become effective if it possesses the appropriate institutions

<sup>1</sup> J. J. Rousseau, *A Lasting Peace through the Federation of Europe* (first published 1761), trans. Vaughan, p. 46.

through which the combined will can function rapidly and decisively. Therefore in a remodelled League constitution—as in the case of the federation of the United States a century and a half ago—the federal principle must be expressed in terms of institutions, and it must not be allowed to become the shuttlecock of change or chance. And amongst these essential institutions—impartial in their application and automatic in their operation—there are those which are intended to restrain and deter the aggressor. The Italo-Abyssinian conflict has demonstrated once more the imperative need for the establishment of such institutions as part of the organisation of a reformed League, without which there can be no law and no peace—only anarchy and war.

## CHAPTER VI

### THE NEED FOR AN EQUITY TRIBUNAL

*"A good judge judges according to what is right and good and prefers equity to strict law."—COKE.*

The  
Lytton  
Commis-  
sion.

WHEN, in October 1935, the members of the League decided to impose financial and economic sanctions upon Italy, they apparently forgot a very simple proposition—namely, that a policeman cannot function without a judge. The converse is equally true—that a judge is useless without a policeman. Both are complementary, and neither can be dispensed with if the rule of law is to be established and maintained in the sphere of international relationships as it is in every civilised community. It will be remembered that in the Sino-Japanese conflict the necessity for the appointment of the judge was recognised, and the Lytton Commission,<sup>1</sup> composed

<sup>1</sup> In consequence of the Japanese coup of 18th–19th September, 1931, and of the appeal of the Chinese Government to the League Council under Article 11, the Council on 10th December, 1931, by unanimous vote, constituted "a Commission of five members to study on the spot and to report to the Council on any circumstance which, affecting international relations, threatens to disturb peace between China and Japan, or the good understanding between them upon which peace depends." The members of the Commission were selected by the President of the Council, with the approval of the parties to the dispute. The names of the representatives were: General Henri Claudel (France), Dr. Heinrich Schnee (Germany), Lord Lytton

of five impartial and disinterested persons, was appointed to investigate the issues in dispute and to report its conclusions to the Assembly of the League. The Report of the Commission was unanimously adopted by the Assembly,<sup>1</sup> but was rejected by Japan. Consequently the Government of the Mikado was, in effect, declared to be the aggressor, but no sanctions were imposed, and Article 16 was treated as a dead letter. This policy was particularly short-sighted and unfortunate, because at that moment there seemed to be every prospect that the United States would be prepared to co-operate with the members of the League in imposing a financial and economic boycott upon Japan.<sup>2</sup> Had such combined action been taken, Japan, rather than face a financial crisis and a disastrous boycott, would

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(Great Britain), Count Luigi Aldovrandi-Marescotti (Italy), and Major-General Frank R. McCoy (United States). The Chinese and Japanese Governments, in accordance with the Resolution of 10th December, each appointed an assessor. Lord Lytton, the British member of the Commission, was appointed Chairman. The Commission pursued investigations in the Far East from February to July 1932, and completed its report in September. This Report, and the general principles of settlement contained therein, was the basis of the Assembly Report, unanimously adopted under Article 15, para. 4, on 24th February, 1933 (*League of Nations Official Journal*, 1932, p. 238; Russell M. Cooper, *American Consultation in World Affairs*, New York, 1934, p. 232).

<sup>1</sup> The Report was adopted on 24th February, 1933 (*League of Nations Official Journal*, *Special Supplement*, No. 112, p. 22).

<sup>2</sup> The *Manchester Guardian* of 22nd February, 1932, reported: "There is a large and growing opinion in the United States in favour of an economic boycott against Japan to compel her to cease her operations in Manchuria and Shanghai." See also *The Times*, 20th February, 1932, and the *Manchester Guardian*, 29th February, 1932.



probably have been compelled to accept the conclusions of the Lytton Report, and the League would have asserted its authority in the Far East. Great Britain, however, despite the fact that her representative at Geneva had voted for the adoption of the Lytton Report, gave her moral, or immoral, support to Japan.<sup>1</sup> In the House of Commons Sir John Simon condoned the action of Japan and, instead of standing solidly behind the Covenant in its entirety, played the rôle of saboteur—an example which France, under the leadership of M. Laval, so successfully emulated in the Italo-Abyssinian conflict.

The Judge  
and  
Police-  
man.

In the case of China and Japan the judge had functioned, but the policeman failed to put in an appearance. In the case of Italy and Abyssinia, however, the services of a diminutive policeman were requisitioned, but the judge was conspicuous by his absence. As soon as Italy had been branded as the aggressor, financial and economic sanctions were imposed upon her, but no impartial and disinterested body was created to investigate the issues in dispute and to recommend to the Assembly a just and reasonable solution of this difficult problem. The results seem to have been the same in both instances. Abyssinia has apparently shared the fate of Manchuria, and the aggressors, having successfully defied the League, are now engaged upon a policy of forceful penetration in Africa and North China respectively. Instead of arbitral settlements reached through the machinery of the League, the world is confronted with *faits accomplis*, the result of military operations

<sup>1</sup> See *Force*, pp. 196 *et seq.*

directed against weak and almost defenceless peoples.

In the Far Eastern conflict the League relied exclusively upon the moral factor—namely, the report of a Commission illustrating the working of an Equity Tribunal, whilst in the African *débâcle* it failed in its procedure to insist upon the idea of equity, and relied almost exclusively upon financial and economic coercion when the conciliatory efforts of the Council had failed. Despite assertions to the contrary,<sup>1</sup> it is not suggested that had such a tribunal been constituted it would have been accepted by Mussolini or caused him to modify his plans for the conquest of Abyssinia and the subjugation of the Ethiopian peoples. But in order to rally world public opinion in support of the maximum penalties provided for in Article 16, both the moral and the material factors should have been brought into play, the former represented by an impartial tribunal charged with the task of recommending an equitable settlement to the Assembly, the latter by a Standing Board of Commissioners entrusted with the duty of co-ordinating sanctions in order to exert the most effective pressure upon the aggressor. Both these institutions were indispensable if it was intended to assert the rule of law.

Moral and  
Physical  
Force.

<sup>1</sup> Addressing the Assembly on 10th October, 1935, the Italian delegate, Baron Aloisi, said, "The delegate of the Irish Free State said authoritatively from this very platform, 'Why can we not endeavour to forge an international instrument, not merely for settling international disputes when they arise, but for removing in advance the causes of those disputes?' The League of Nations should surely have the means of doing so."—*League of Nations Assembly Records*, 16th Assembly, 1935, Plenary Meetings, p. 105.

Purpose  
of Policing  
Measures.

Let us now consider the necessity for an Equity Tribunal from another angle. It is clear that all sanctions, whether diplomatic, financial, economic or military, are policing measures designed to uphold the rule of law. The paramount intention is to produce a deterrent and not merely a punitive effect—to prevent the crime rather than to punish it. All policing codes and regulations are therefore designed mainly for three purposes :

- (a) To afford protection against injury ;
- (b) To compel appearance before the appropriate Court or Tribunal ; and
- (c) To uphold the law and, if necessary, to enforce the verdicts, findings and awards of these institutions.

Courts and  
Tribunals  
Essential.

It is clear, therefore, that policing measures, or sanctions, cannot become fully operative unless and until the appropriate institutions have also been created. In the international sphere if the dispute is a juridical one, involving the interpretation of treaties or the public law as it exists at the moment, then it can automatically <sup>1</sup> be referred to the Permanent Court of International Justice. On the other hand, if it is a political dispute in which one or other of the parties demands a revision of existing treaties or of the public law, then, when the processes of negotiation and conciliation have been exhausted,

<sup>1</sup> It should be noted, however, that even in the case of judicial disputes such a situation only exists in so far as the signatories of the Optional Clause (Article 26) of the Statute of the Permanent Court are concerned. A full list of those States which have ratified the Optional Clause is to be found in A. F. Frangulis, *Théorie et Pratique des Traités Internationaux*, Paris, 1935, p. 14.

the dispute should automatically be submitted to an Equity Tribunal, whether the parties to the dispute consent or not. The Tribunal, after the fullest investigation, will make its award in the form of a report to the Assembly, which, unless it is rejected by, let us say, a simple majority or a qualified majority of that body, becomes the settlement which both parties must accept.<sup>1</sup> No one will suggest that the Assembly, whose proceedings are governed by the rule of unanimity and whose States Members, large and small alike, enjoy the same status and voting power, is capable of enacting statutory international law in the same way as the modern legislature of a federal state—as, for instance, the Congress of the United States. We have not yet reached the stage of world, or even European, consciousness when what Tennyson described as “the Parliament of Man” can perform its duties effectively and expeditiously. Consequently the legislative function must be put into commission through the establishment of the tribunal system as an integral part of the organisation of the League, and by introducing the

<sup>1</sup> In this connection it is interesting to observe that the members of the Assembly were not asked to express their approval of the Council's report on the Italian aggression, but were given an opportunity of recording their dissent. The President of the Assembly summarized the procedure thus: “Of the 54 members present at the Assembly three States expressed a contrary opinion, and a fourth has spoken against the application of sanctions, and 50 States Members of the League have expressed an opinion in accordance with that of the 14 States Members of the Council, by conveying either explicitly by their declarations or tacitly their Governments' acquiescence . . .”—*League of Nations Assembly Records*, 16th Assembly, 1935, Plenary Meetings, pp. 99–115.

idea of equity, which has played such an important rôle in the evolution of municipal law, into the sphere of international relationships. This does not mean that the Assembly will be deprived of the legislative powers which it now possesses,<sup>1</sup> but that it will be equipped with a standing and subsidiary body, which will enable it to develop gradually its federal and statutory functions, and at the same time will provide the League with efficient machinery for the settlement of all disputes. Moreover, by implementing the implications of the Kellogg Pact, this orientation will close those gaps in the Covenant through which nations may still resort to war. In short, an Equity Tribunal is the next milestone on the road which leads to the Parliament of Man and the Federation of the World.

Objec-  
tives of  
Sanctions.

Let us assume, however, that one of the parties has ignored the existence of the Tribunal and has resorted to war. The stage of conciliation and negotiation has now come to an end, and the dispute has automatically passed out of the hands of the Council and become the subject of adjudication by a semi-legislative and arbitral body. In these circumstances the first objective of sanctions is to bring hostilities to an end and to compel the appear-

<sup>1</sup> It may be objected that at present the Assembly possesses no legislative powers. It should be remembered, however, that the Assembly can and does initiate legislation in the sense that proposals have on many occasions been adopted by the Assembly and afterwards referred to the national Parliaments of its Member States for ratification before the addition of the proposals in question as a substantive part of international law. The 1924 Protocol for the Pacific Settlement of International Disputes may be cited as an example.

ance of the aggressor State before this Tribunal. Should the latter refuse to appear, the case would nevertheless proceed, although one of the disputants chose to remain *in abstentio*, and the award would be promulgated. Consequently the second objective of sanctions is to secure the compliance of both parties to the award, and there could be no question of lifting them until compliance had been secured.

In this connection, attention should be drawn to Mr. Eden's statement in the House of Commons on 18th June, when, in announcing the decision of the British Government to discontinue the sanctions imposed upon Italy, he declared that "sanctions can be maintained only for some clearly defined and specific purpose." Apparently it did not occur to the British Government that one of the specific purposes of sanctions should have been to secure the acceptance of a "League settlement," and that, in the absence of an Equity Tribunal, no effective machinery for the promulgation of such a settlement existed.

It will be observed that in these circumstances the duration of sanctions depends upon the acceptance by the contending parties of a specific award—in other words, of a League settlement arrived at through the instrumentality of an impartial body and a pacific procedure. Until such a settlement has been promulgated and holds the field, there will always be the danger of a diplomatic miscarriage of justice—as, for instance, the Hoare-Laval proposals—or of the premature lifting of sanctions as a result of a military victory. On the other hand, when the objective of the members of the League has been

Duration  
of Sanc-  
tions.

clearly defined in terms of an arbitral decision, which will be supported by public opinion, there is every reason to suppose that, despite temporary setbacks, sanctions will be maintained until the League has vindicated its authority. Moreover, there can be no doubt that in the recent conflict the absence of any such plan or settlement contributed to the disintegration of the sanctionist front. It helped to destroy its unity and to weaken its determination to vindicate the cause of justice at all costs.

Necessity  
for Equity  
Tribunal.

Moreover, it should be remembered that in the absence of an Equity Tribunal what, at the outset, may be molehills are apt to grow into mountains, with disastrous results. Señor Madariaga emphasised this point in a speech at the 1933 Assembly when he said :

“ Why are there wars ? Because there are disputes. Why are there disputes ? Because problems become aggravated. Why do problems become aggravated ? Because they are not studied at the stage when they are no more than questions.”

Then why are these problems not studied when they are no more than questions, before the newspapers have engaged in a wordy battle, before passions have been aroused and the military timetables prepared ?

All these considerations point to the necessity for the creation of an Equity Tribunal as part of the permanent machinery of the League. Had such a body been in existence, its services could have been requisitioned in the early stages of the Italo-Abyssinian dispute, before the aggressive policy

of Italy was well under way. This does not mean that the existing procedure of negotiation and conciliation undertaken by the Council should be discontinued. It does mean, however, that when these proceedings have broken down, and when a deadlock has been reached, the dispute should automatically be referred to an impartial body before whom the disputants should be summoned to appear, and whose findings or awards, after having been endorsed by the Assembly, should be regarded as binding upon both parties.

At the conclusion of the World War, proposals for the prevention of future war were put forward by groups and associations in different countries. Amongst these was a group under the leadership of Lord Bryce who, it will be remembered, during his Ambassadorship at Washington had collaborated with President Taft in drafting an Arbitration Treaty between the United States and Great Britain.<sup>1</sup> The proposals adumbrated by this group embodied the idea of equity and included a Council whose members would be appointed for a

<sup>1</sup> Towards the end of the nineteenth century the practice of submitting international disputes to arbitration developed considerably, and the Hague Convention provided that all disputes of a legal nature might be settled by this means. In 1911 President Taft negotiated an arbitration treaty with Great Britain which provided that all justiciable disputes should be submitted to the Hague Tribunal or some special body. Unfortunately the Treaty, having failed to secure the approval of the United States Senate, was never ratified. See, further, A. Zimmern, *The League of Nations and the Rule of Law*, 1936, p. 125 *et seq.*; and Oppenheim, *International Law*, 1921 edition, pp. 21-22. The text of the treaty is to be found in Command Paper 5805 (1911).



definite period of years, and who were willing to sever their political associations with the Governments of their respective countries and devote their services exclusively to the League. In short, the position of this body was to be quite different from that of the existing Council of the League. It was not to be composed of persons who directly represented their Governments. On the contrary, it was, in fact, to be an areopagus of Elder Statesmen, three of whom would be nominated by each Government for a specific term of years.

This Council was to be entrusted with the examination of political, as distinguished from juridical, disputes. It was empowered to investigate all questions likely to lead to a breach of the peace, to make recommendations for a settlement, and to publish its conclusions. In effect, it would legislate in the general interest and would submit its recommendations to all the Governments concerned, who, of course, would be free to accept or reject them. Broadly speaking, this is the function which is supposed to be exercised by the Assembly at Geneva, but the Assembly, like the Council, is composed exclusively of Government representatives.

The Committee of Five.

It is true that the *ad hoc* Committee of Five<sup>1</sup> was appointed by the Council when it was too late,

<sup>1</sup> The Committee of Five was unanimously appointed by the Council on 6th September, 1935. The function of the Committee, according to its terms of reference, was "to make a general examination of Italo-Abyssinian relations, and to secure a pacific settlement" (*The Times*, 24th September, 1935). At that time the rainy season in Abyssinia was nearly over, and shipments of troops and war materials from Italy to East Africa had been taking place for more than nine months.

and when there was no time for a complete and exhaustive examination of the problem in all its bearings. But there was no certainty that even this Committee would be set up. It was not an integral part of the permanent or standing organisation of the League. Moreover, the persons constituting this Committee were, like the Members of the Council, the official representatives of Governments, three of which possessed vast territories in Africa. Consequently, as the spokesmen of their respective Governments and with the instructions of their Foreign Offices in their pockets, they could hardly be described as disinterested or impartial, however sincerely and honestly they attempted to carry out their mandate.

On the other hand, a body of independent men, versed in public affairs and completely detached from any Government, described in the 1924 Protocol as "persons who, by their nationality, their personal character and their experience, appear to furnish the highest guarantees of competence and impartiality,"<sup>1</sup> would have inspired more confidence. They would have had no axes to grind, nor in the conduct of this arduous and responsible task would they have been influenced by the previous actions of any Governments under the old dispensation, when conquest and annexation were recognised as a normal procedure.

Composi-  
tion of  
Tribunal.

Signor Mussolini, with some show of plausibility, objected to the inclusion of the representatives of France and Great Britain in the Committee of

<sup>1</sup> Article IV (2 B) of the Protocol for the Pacific Settlement of International Disputes.

Five.<sup>1</sup> He could not have advanced the same objection to a tribunal of independent persons constituted on the lines of the Lytton Commission.

The late Count Apponyi, the veteran Hungarian statesman and ardent supporter of the League, in a speech at the Fifth Assembly in September, 1924, pointed out the difficulties which are bound to arise both in the Council and Assembly when they are composed of persons acting under the direct instructions of their respective Governments. This is what he said :

“ I have the deepest respect for the Council as a body and also for all the individual members of the Council, but no institution can be expected to do work for which it is not adapted. The Council is first and foremost a political body, consisting of statesmen delegated by their respective Governments and having definite instructions. . . . [And] it is only natural that members of the Council should be unwilling, or seldom willing, to assume responsibility of opening up a question that is likely to prove embarrassing to a State with which they are anxious to maintain good relations.”

<sup>1</sup> When negotiations began in Geneva on 5th September to examine the Italian memorandum, Baron Aloisi argued that if Italy were not represented on the Committee of Five, France and Great Britain, as interested parties, being signatories of the Treaty of 1906, should not be included. It was then proposed that the membership should be reduced to three, Poland, Spain, and Turkey, but the Polish delegate declined to serve on it in the absence of representatives of Great Britain and France. Ultimately the Italian delegates withdrew their objection to the appointment of a “ Conciliation Committee,” and the Committee of Five was set up. See also *Daily Telegraph*, 6th–7th September, 1935.

No such embarrassment need be felt by an Equity Tribunal composed of impartial and disinterested persons appointed, like the judges of the Permanent Court, for a definite period of years. Such a body would be able to deal with each problem objectively. They would not be deterred from undertaking investigations and making recommendations which might be distasteful to States Members with whom all the Foreign Secretaries and representatives of Governments on the Council desired to remain on the best of terms. Count Apponyi's criticism is particularly appropriate when we apply it to the behaviour of members of the Council during the Italo-Abyssinian conflict. As we have seen, in the early stages, there was procrastination and delay because no one relished the job of tackling "Cæsar" on his own doorstep. At Stresa, the Prime Minister and Sir John Simon, with an expert adviser on East African affairs from the Foreign Office, constituted the British Delegation. Obviously the intention was to broach the Abyssinian affair with Mussolini, but owing to the embarrassment which might be caused, the subject was never mentioned, and the African expert's services were not requisitioned.<sup>1</sup>

Moreover, it would not have surpassed the wit of such a Tribunal to have submitted a plan to the Assembly which would have provided for :

Func-  
tions of  
Tribunal.

<sup>1</sup> Although it seems clear that the question of Abyssinia was not discussed at Stresa with Mussolini, the British East African expert apparently had consultations with Italian officials in connection with the grazing rights of the natives in British and Italian Somaliland. There is, however, no evidence that the larger question was dealt with even in these conversations. See, further, *The Times*, 17th April, 1935.

- (a) The welfare of the Ethiopian people, the maintenance of order in, and the internal development of, their country;
- (b) Any legitimate Italian claims for economic and colonial expansion in East Africa; and
- (c) The economic interests in this part of the world of other nations, Members and non-Members of the League.<sup>1</sup>

It is clear that if, in future, there is to be a substitute for war, in order to assert the dynamic principle in the relationships of States, to effect changes in the public law through a peaceful procedure, to carry out the implications of Article 19 of the Covenant and to ensure that treaties shall be revised on the basis of justice and righteousness, then the need for an Equity Tribunal becomes imperative as part of the constitution of a remodelled and revitalised League.

<sup>1</sup> A settlement along these lines was proposed in the Petition to the British Government drawn up by the British Section of the New Commonwealth Society in February 1936, and signed by more than 7000 representative members of the professions, by leaders of the Churches, civic authorities and members of political organisations and voluntary bodies. The Petition was sent to the Prime Minister in March 1936 (*The New Commonwealth*, March and April, 1936, pp. 606 and 643).

## CHAPTER VII

### INTERDEPENDENCE OF ECONOMIC AND MILITARY SANCTIONS

*“Sanctions lose a great deal of their force unless they can be supported by the ultimate sanction, which is blockade or force.”*—THE RT. HON. STANLEY BALDWIN, M.P.

RECENT events have clearly demonstrated that financial and economic sanctions alone will not suffice to deter an aggressor bent upon committing the crime of war. Nor are the immediate effects they produce calculated to bring hostilities to a speedy termination. It will be remembered that this was one of the lessons of the World War, when four and a half years elapsed before the Allied blockade produced decisive results upon the economic conditions and resources of the Central Powers and crippled their ability to wage an offensive war. In the end, no doubt, the steady pressure exerted by the blockade was one of the chief factors which contributed to the military collapse, but its results, although cumulative, were manifestly slow in their operation. Moreover, without corresponding military effort on the part of the Allied and associated Powers, which gave time for the financial and economic measures to assert themselves, the blockade would have been unsuccessful, and the military

Lesson of  
the World  
War.

operations of the blockaded Powers would have proved to be decisive.

Economic  
Sanctions  
will not  
Suffice.

Consequently it is wrong to suppose, as so many people do, that financial and economic sanctions alone, including what are described as mineral sanctions,<sup>1</sup> will prevent nations from resorting to war,<sup>2</sup> or that their effects are so overwhelming as to discount entirely and nullify completely the results of successful military operations. It is clear that unless they are supported by a military effort equal, if not superior, to that put forth by the aggressor, they will miserably fail to uphold the rule of law. As adjuncts of the policing system, especially for the purpose of exerting moral and economic pressure upon a defaulting or recalcitrant nation, they are extremely valuable,<sup>3</sup> and in order to ensure the carrying out of decisions reached through the medium of an Equity Tribunal and promulgated by the League, the mere threat of financial and economic policing measures may suffice. But if the State against which they are directed feels that its military resources and preparedness are far superior to

<sup>1</sup> An excellent account of the problem of mineral sanctions is to be found in Sir Thomas H. Holland's book *The Mineral Sanction as an Aid to International Security*, London, 1935.

<sup>2</sup> See especially D. Mitrany, *The Problem of International Sanctions*, London, 1925, pp. 12 *et seq.*, pp. 34 *et seq.*, pp. 39 *et seq.*, and the *Draft Report on Sanctions*, Part II, drawn up by a study group of members of the Royal Institute of International Affairs, and submitted to the Eighth International Studies Conference on Collective Security by the British Co-ordinating Committee for International Studies.

<sup>3</sup> See Millward, "The Rôle of Peaceful Pressure" (*The New Commonwealth*, August 1934, p. 158) and Delaisi, "The Fallacy of Economic Sanctions" (*ibid.*, November 1934, p. 208).

the corresponding League forces which may be brought against it, that State will not be deterred from resorting to the arbitrament of war.

It follows that in putting into operation any plan of financial and economic sanctions, the members of the League must, in the last resort, be prepared to support it by combined military action.<sup>1</sup>

Further, in the case of an act of aggression—that is to say, an armed attack upon another member of the League—as contrasted with an act of default, it is clear that all sanctions, including military policing measures, should at once be put into operation against the aggressor: otherwise the obligation of mutual defence goes by the board, the deterrent effect of the collective system is seriously impaired, and the League runs the risk of being confronted with a *fait accompli*, culminating in the complete collapse of its sanctionist policy. Therefore, it is impossible to group sanctions and to put them into watertight compartments, because coercive action, if it is to be successful, can only be organised as a whole.<sup>2</sup> Hence the need for a plan of co-ordination

Policing  
Measures  
Essential.

<sup>1</sup> See W. M. Hughes, *Australia and War To-day*, Sydney, 1935, pp. 31 *et seq.*, and speeches of Mr. Baldwin who, for example, on 20th June, said, "Collective security will never work unless the nations who take part in it are prepared simultaneously to threaten with military sanctions, and, if necessary, to fight" (*The Times*, 22nd June, 1936). See also Mr. Baldwin's speech in the House of Commons on 23rd June, 1936 (Hansard, Parliamentary Debates, House of Commons, Vol. 313, No. 108, Columns 1725 and 1728).

<sup>2</sup> In addition to Mr. Hughes' book referred to in the preceding note, see the literature cited under Note 2, p. 66 above, and Sir Arthur Salter, *The United States of Europe and Other Papers*, London, 1933, pp. 144 *et seq.*



in which the principles of gradualness can be asserted, whilst at the same time the amount of pressure exerted upon the aggressor or the defaulter can, if necessary, be steadily increased. But to ensure the success of such a plan it must include the use of physical force as a policing measure, should the necessity for its employment arise. Otherwise a threat of military reprisals by an aggressor will bring the whole machinery of economic and financial sanctions to a standstill.

Lessons  
of Sino-  
Japanese  
Conflict.

This point is exemplified not only in the Italo-Abyssinian conflict, but also in the case of the Sino-Japanese dispute. We have already alluded to the fact that when Japan was branded as the aggressor at Geneva, no steps were taken to put the provisions of Article 16 into operation. Although, as we have seen, public opinion in America was at that moment running strongly in support of a boycott of Japanese goods,<sup>1</sup> and there seemed to be every prospect that if the members of the League had stuck to their guns, the people of America would eventually have co-operated in joint economic pressure against Japan, nevertheless there was no response either from London or Geneva. It is difficult to understand how Japan could have successfully withstood the imposition of financial and economic sanctions directed against her by all the members of the League with the active co-operation of the United States, or how she could have waged a successful war against such a combination. But apparently the British Government thought otherwise. Sir John Simon, within forty-eight hours of having cast his

<sup>1</sup> See *ante*, p. 51, Note 2.

vote at Geneva declaring Japan to be the aggressor, proposed to the House of Commons an embargo upon the export of arms to Japan and China, thus meting out the same treatment to the aggressor and to the victim of aggression, and completely stultifying his vote in the Assembly. Moreover, before leaving Geneva, he had joined in an undertaking that members of the League should refrain from taking any independent action, and that whatever coercive measures were considered practicable should be undertaken collectively. It will be recalled that the Committee of Twenty-two were instructed to advise upon what further steps should be taken to render operative the unanimous vote of the Assembly.<sup>1</sup>

What is the explanation of this extraordinary behaviour on the part of Great Britain, not only in backing out of her undertaking to other members of the League to refrain from unilateral action, but

<sup>1</sup> On 11th March, 1932, the Assembly of the League of Nations endorsed the policy enunciated by the American Government on 7th January and 23rd February that territory acquired in violation of treaties should not be recognised by the States Members of the League. At the same time, a Committee of Nineteen was set up (*League of Nations Official Journal*, 1932, p. 1871) to deal with matters arising out of the Sino-Japanese dispute. On 15th December the Committee of Nineteen submitted a Draft Report proposing that its members should form a Committee of Conciliation, and that representatives from the U.S.A. and the U.S.S.R. should be invited to join the new Committee. On 24th February, 1932, the League Assembly unanimously adopted this Report, and the new Advisory Committee was set up. It consisted of twenty-two members, the original nineteen together with representatives of the U.S.A., Canada, and the Netherlands. The U.S.S.R. declined to send a representative (see Toynbee, *Survey of International Affairs*, 1933, pp. 510-511).

also in repudiating her covenanted obligations under Article 16? In extenuation it was said that Japan would regard the imposition of economic sanctions as an act of war, and that she would engage in military reprisals against members of the League, which, in the first instance, would be directed against Great Britain. In these circumstances, it was argued, there was no assurance that the members of the League or the Government of the United States would come to her assistance. She would be left to carry the sanctionist baby alone and unaided. In the debate which followed Sir John Simon said:

“It is impracticable for a country like ourselves, acting alone, to differentiate between one combatant and another . . . the reasons . . . will occur to any man of ordinary sense and prudence. I think that I am myself enough of a pacifist to take this view, that however we handle this matter I do not intend my own country to get into trouble about it.”<sup>1</sup>

Moreover it was common knowledge that the British fleet would be unable to withstand successfully a military reprisal by Japan.<sup>2</sup>

<sup>1</sup> Parliamentary Debates, House of Commons, Vol. 275, Cols. 57-58.

<sup>2</sup> Sir John Simon in the House of Commons, 27th February, 1933 (Hansard, Parliamentary Debates, House of Commons, Vol. 275, Series 5, Columns 57-58). A year before (22nd February, 1932), Admiral Sir Sydney Fremantle, in a speech at Chatham House, expressed the following view: “An economic blockade would have to be supported by a military blockade—an extremely difficult operation of war—which in the case of an island power would have to be carried out by sea. When international sea forces were required, the British Navy did ninety per cent. of the work—leaving the United States out of the question. The British Navy would be called upon to conduct this

In effect, Great Britain was not prepared to run the risk of joining other nations in imposing sanctions upon Japan, lest such a course might involve her in war. Consequently, whether this apprehension was justified or not, it proves the interdependence of economic and military sanctions, and demonstrates that there can be no effective collective system unless, behind the organisation of financial and economic policing measures, there also stand the combined military, naval and air forces of the States Members of the international authority, ready if called upon to act as a policing instrument and to assert the superiority of the rule of law.

Despite the obvious lesson of the Sino-Japanese *débâcle*, the members of the League, mainly on account of the opposition of Great Britain, took no steps either to organise a collective system of economic and financial sanctions, or to ensure that in the event of their application they should, if necessary, be reinforced by collective military action. The Treaty of Mutual Assistance<sup>1</sup> and the 1924

Sanctions  
Remain  
Unorgan-  
ised.

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extremely difficult operation against our old ally, under strategical conditions much to our disadvantage, and necessarily involving our bringing Great Britain into the most undesirable contact with the United States" (Toynbee, *Survey of International Affairs*, 1932, p. 528).

<sup>1</sup> The Treaty of Mutual Assistance had its genesis in a resolution adopted by the Second Committee of the Assembly in September, 1921, to the effect "that the Temporary Mixed Commission be asked to make proposals on general lines for the reduction of armaments." In the course of its discussions the Temporary Mixed Commission came to the conclusion that security must precede schemes for disarmament, and reported accordingly to the Third Assembly in 1922, which then directed the Committee to prepare plans for a Draft Treaty of Security. In 1923 the Temporary Mixed Commission submitted a Draft Treaty based on

Protocol<sup>1</sup> were decently buried, and the proposals put forward by France during the abortive Disarmament Conference for the creation of an international police force were never seriously con-

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plans proposed by Colonel Requin and Lord Robert Cecil. The security provided for in the Draft Treaty consisted of assurances to be given by the signatory Powers that in the event of a State being attacked the remainder would immediately come to its assistance. It was provided, however, that no State should be entitled to the benefit of this guarantee until it had reduced its armaments to a scale approved by the Council. Sixteen States Members accepted the Treaty in principle, but before the scheme could be brought to fruition a change of government in Great Britain resulted in the substitution of the 1924 Protocol. For further details see J. W. Wheeler-Bennett and F. E. Langermann, *Information on the Problem of Security*, London, 1927, pp. 95 *et seq.*

<sup>1</sup> The 1924 Protocol for the Pacific Settlement of International Disputes may be regarded as the substitute of the British Labour Government—which had just come into office—for the Draft Treaty of Mutual Assistance, sponsored by its Conservative predecessors, which is referred to in the preceding note. As a result of fervent speeches in favour of collective security delivered at the 1924 Assembly by the British and French Prime Ministers (Mr. Ramsay MacDonald and M. Herriot), a Sub-Committee was set up to consider the replies received from the various governments in connection with the Draft Treaty together with the proposals of the Shotwell Committee. The outcome of this Sub-Committee's deliberations was the 1924 Protocol, which was unanimously adopted by the Assembly on 2nd October, 1924. Undoubtedly the Protocol was a more satisfactory document than the Draft Treaty of Mutual Assistance in that it introduced the element of arbitration and represented a genuine attempt to reinforce the weak points in the Covenant. Of the 48 States represented at the Assembly when the Protocol was unanimously adopted, seventeen actually signed the document and only one, Czechoslovakia, had ratified it before another change of government in Great Britain resulted in its abandonment in favour of the Locarno system. See, further, J. W. Wheeler-Bennett and F. E. Langermann, *Information on the Problem of Security*, 1927, pp. 101 *et seq.*

sidered.<sup>1</sup> No attempt was made to secure unity of plan or direction in which all the States Members of the League—or, at any rate, its European members, including the smaller Powers—might participate and to which they could make their appropriate contributions.

We recollect that the Allies were confronted with a similar problem during the World War, and it was only when the Inter-Allied organisations at Versailles began to function that decisive results were obtained.<sup>2</sup> Consequently, when the Italo-Abyssinian conflict became acute and Great Britain emerged as the champion of collective action, there was no Sanctions Section of the Secretariat such as was envisaged in Article 12 of the 1924 Protocol<sup>3</sup>; there was no League policing staff, such as M. Bourgeois

<sup>1</sup> See *The Problem*, pp. 785 *et seq.*

<sup>2</sup> During the World War an attempt was made on the part of the Allied and Associated Powers to set up Inter-Allied organisations for the more efficient solution of economic problems and the more rapid administration of such vital industries as shipping. At the Paris Conference, which began on 29th November, 1917, the Allied Maritime Transport Council was created. This worked so satisfactorily that other similar organisations were set up. In the course of 1918 it was found convenient to group a number of the Committees under central authorities. Two councils were formed for this purpose—the Inter-Allied Munitions Council and the Food Council (see Sir Arthur Salter, *Allied Shipping Control*, 1921).

<sup>3</sup> Article 12 of the Protocol for the Pacific Settlement of International Disputes :

“In view of the complexity of the conditions in which the Council may be called upon to exercise the functions mentioned under Article 11 of the present Protocol concerning economic and financial sanctions, and in order to determine more exactly the guarantees afforded by the present Protocol to the signatory States, the Council shall forthwith invite the economic

had proposed in his amendment to the Covenant during the discussions of the League of Nations Commission in Paris.<sup>1</sup> In fact, no organisation of any kind was requisitioned to co-ordinate in advance the coercive measures which might have to be undertaken should it become necessary to put Article 16 into operation. Nor does it appear that any steps had been taken to arrange for League "Staff consultations and conversations" in order to decide what combined military action might be necessary if the sanctions about to be imposed should be regarded as a *casus belli* by the aggressor.

Article 9:  
a Military  
Commis-  
sion.

In this connection it is difficult to understand why the League Commission of Military Experts, created under Article 9 of the Covenant, was not charged with the task of examining and reporting upon the collective arrangements which should be

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and financial organisations of the League of Nations to consider and report as to the nature of the steps to be taken to give effect to the financial and economic sanctions and measures of co-operation contemplated in Article 16 of the Covenant and in Article 11 of this Protocol.

"When in possession of this information, the Council shall draw up through its competent organs :

- (1) Plans of action for the application of the economic and financial sanctions against an aggressor State ;
- (2) Plans of economic and financial co-operation between a State attacked and the different States assisting it ;

and shall communicate these plans to the Members of the League and the other signatory States."

<sup>1</sup> David Hunter Miller, *The Drafting of the Covenant*, Vol. II, 1928, pp. 242 *et seq.*

provisionally entered into to meet such an emergency. Article 9 reads as follows :

“ A Permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally.”

It will be observed that this Article refers to the execution of the provisions of Article 8, which deals not only with the problem of disarmament, but also with “ the enforcement by common action of international obligations.”

This Committee functioned during the Disarmament Conference,<sup>1</sup> but it was clearly the intention of the framers of the Covenant that it should also be called upon to act when common action and international obligations were involved. The Italo-Abyssinian conflict was a clear case in which the services of the Commission should have been utilised. Why, it may be argued, were its members not summoned to advise the Council on military, naval and air questions in the specific circumstances which had arisen ? To ignore the existence of this Commission was another flagrant omission to carry out the intentions and obligations of the Covenant. The Covenant in its entirety was the watchword of the Foreign Secretary at the Assembly, but it appears doubtful whether Sir Samuel Hoare had ever read the Covenant in its entirety ; he certainly made no attempt to implement the provisions of Article 9. Article 8 is explicit ; its scope is not confined merely to disarmament, and it is high time

<sup>1</sup> See *League of Nations Official Journal*, 1931, p. 29, and 1932, p. 1871.



that this Commission, composed of military experts, should be summoned to investigate and report upon the whole question to the Council and Assembly, as to how "military, naval and air questions generally" can be co-ordinated in defence of the rule of law.

It is therefore clear that the governments represented at Geneva had never seriously faced the problem of the interdependence of economic and military sanctions. The lessons of war-time Versailles and the seizure of Manchuria were never recognised, or were allowed to pass unheeded, until a fresh crisis supervened and the policy of "drift" was suddenly arrested with a jerk which almost dislocated the necks of all the Foreign Secretaries in Europe.

Inde-  
pendent  
Military  
Action.

The inevitable result followed. "There was bridling with hurry and saddling with haste." As we have seen, the programme for the embargo of arms and the economic and financial restrictions to be imposed upon Italy was produced at high pressure and in great haste. But in the military sphere each nation did "that which seemeth best in its own eyes"—which, in the vast majority of cases, was nothing. A British Fleet was despatched to the Mediterranean<sup>1</sup>—not at the behest of the League, or even after consultation with its members, but upon the instruction of the British Government. At that moment it appeared that the Cabinet was not content with a collective sanction, but was also prepared to take unilateral action against the aggressor. However, at a later stage, when the

<sup>1</sup> *The Times*, 19th and 24th September, 1st, 8th, 14th and 17th October, 1935.

question of the oil sanction became acute, it dawned upon the Foreign Office that the application of the collective system could not, after all, be confined to economic and financial measures, but that combined naval action might also be involved. In other words, they recognised the interdependence of military and economic coercion.

As a result of this tardy recognition a questionnaire<sup>1</sup> was despatched to all the Mediterranean Powers inviting them, as members of the League, to specify what assistance would be forthcoming in the event of an attack by Mussolini upon the British fleet. The response to the questionnaire was reassuring. All the five States Members who had been approached<sup>2</sup>—France, Greece, Spain, Turkey and Jugo-Slavia—expressed their readiness to participate in joint action in the event of a reprisal against any one of their number on the part of Italy.

The  
Question-  
naire.

All these proceedings demonstrate the necessity and, indeed, the feasibility of co-ordinating military and economic measures of coercion into a comprehensive plan for the organisation of sanctions. They also prove that these steps must be taken not on the spur of the moment, but in advance and before the crisis supervenes.

The following questions arise. Why did the British Government propose the imposition of

Necessity  
for Joint  
Action.

<sup>1</sup> Cmd. 5072.

<sup>2</sup> In addition to the five Powers who were directly approached in their capacity as Mediterranean Powers, Czechoslovakia and Roumania informed the British Government that the undertakings of Jugo-Slavia, Greece and Turkey had been given after full consultation with them (Cmd. 5072, pp. 5 *et seq.*).

economic sanctions before discovering what arrangements could be made under Paragraph 2 of Article 16 which reads as follows :

“ It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air forces the members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.”

Why did the British Government take unilateral action in despatching its fleet to the Mediterranean without consultation with other members of the League and endeavouring to secure joint naval co-operation at the earliest opportunity? Why were these arrangements not discussed and entered into many months previously, when Mussolini began to despatch his troops to East Africa, and when the deterrent effect of such measures would have been immeasurably greater? Lastly, why were not all the members of the League—or, at any rate, all its European members—invited to make their military, naval and air contributions towards the formation of a joint force in defence of the Covenant? It is no answer to say that “ not a gun, not a ship, not a man had been moved.”<sup>1</sup> Did any Government represented on the Council of the League propose that all its members should be asked to move collectively? What became of the Military Commission provided for in Article 9 of the Covenant, to advise the Council concerning “ the enforcement

<sup>1</sup> Sir Samuel Hoare in the House of Commons, 19th December, 1935 (Hansard, Parliamentary Debates, House of Commons, 5th Series, Vol. 307, Col. 2015).

by common action of international obligations"? Locarno had its Staff conversations in London;<sup>1</sup> in Geneva they were conspicuous by their absence. Does this mean that there is to be one law for Hitler and another for Mussolini? If so, then the League becomes what Lord Balfour once described as "a painted screen behind which the forces of militarism are sharpening their knives all the time."<sup>2</sup> It is clear that not only was the organisation of collective security entirely lacking, but also that there was a lamentable absence of determination on the part of the members of the League to bring the aggressor to book and to insist upon the cessation of hostilities in Abyssinia.

This fact is further exemplified in the treatment of the oil sanction. It will be remembered that oil, coal and steel were omitted from the list of articles which might not be exported to Italy. A supply of oil was essential for naval purposes, army transport and air service requirements. Without it, military operations would be brought to a standstill in a few months. Consequently, if Italy's supply was cut off, the projected campaign in Abyssinia would become impossible. Therefore, it was argued that an embargo on oil—a military necessity—was tantamount to an act of war, and that Mussolini's

The Oil  
Sanction.

<sup>1</sup> According to the agreement of 19th March, 1936 (Cmd. 5149, Miscellaneous, 4 (1936)), the British Government declared its willingness to instruct its General Staff to enter into contact with the General Staffs of France and Belgium and to arrange technical conditions for the carrying out of their obligations under this agreement in case of aggression. The discussions of the General Staff Officers began in London on 15th April, and ended on 16th April (*The Times*, 16th and 17th April, 1936).

<sup>2</sup> P. Kerr and L. Curtis, *The Prevention of War*, 1923, pp. 14-15.

reply might take the form of military reprisals. It is clear that oil was the key to the situation. Moreover, it possessed the attributes of an economic and a military sanction. Mussolini and his henchmen were obviously perturbed. They were prepared to gamble on the failure of financial and economic restrictions, but oil was in a different category. It embodied the interdependence of economic and military coercion. Therefore the fiat proceeded from Rome that it must not be imposed<sup>1</sup>—and M. Laval received his “marching orders.”<sup>2</sup> How ludicrous! The burglar decides what penalties are to be inflicted upon him and communicates his decision to the judges! What a spectacle! The representatives of fifty nations, including three Great Powers, are intimidated and brow-beaten by a “Sawdust Caesar.” Shades of Matteoti and Amandola! How intrigued they would have been to witness the assassin’s knife and the racketeer’s pistol pointed at the vitals of the League!<sup>3</sup> The oil experts are

<sup>1</sup> The Italian Government stressed the serious view it took of the proposed embargo on oil by mysterious announcements of troop movements, the nature and scope of which were kept secret (*The Times*, 29th November, 1935). Furthermore, Signor Mussolini declared in a speech in the Chamber of Deputies on 7th December, 1935, that the embargo on petrol “is such as gravely to prejudice the development of the situation” (*The Times*, 9th December, 1935).

<sup>2</sup> The question of the oil embargo was the subject of diplomatic conversations between M. Laval and the Italian Ambassador in Paris which led to renewed efforts for conciliation on the part of M. Laval and culminated in the notorious Hoare-Laval peace proposals (*The Times*, 24th and 26th November, 1935; Cmd. 5044, 1935).

<sup>3</sup> See George Seldes, *Sawdust Caesar*, London, 1936, pp. 137 *et seq.*, regarding the assassination of Matteoti and other opponents of Italian Fascism.

called in again, but their report was non-committal. America was blamed, although public opinion there was running strongly on the side of the League, and on more than one occasion the State Department in Washington and the Rockefeller interests had evinced a desire to be helpful and had, at least, proclaimed a benevolent neutrality.<sup>1</sup> However, the order of the day at Geneva was procrastination and postponement, until at last, every subterfuge having been exhausted, the idea of the oil sanction was abandoned.

But the crucial question remains to be answered. Assuming that an embargo on oil had been imposed

Conclu-  
sion.

<sup>1</sup> Even before the League of Nations pronounced its verdict on Italy, President Roosevelt took action under the Neutrality Act of 31st August, 1935 (see Raymond Leslie Buell's study on *American Neutrality and Collective Security*, Geneva, 1935). On 5th October he issued a proclamation of a state of war between Italy and Abyssinia and of an embargo on export from the U.S.A. of arms, ammunition, and implements of war to either country. Furthermore, he gave expression to the new attitude of the U.S.A. towards neutrality in the statement that "any of our people who voluntarily engage in transactions of any character with either of the belligerents do so at their own risk" (*The Times*, 7th October, 1935). Finally, American citizens were warned against travelling on vessels of the belligerent nations.

The reply of the United States Government to Senhor Vasconcellos' letter, emphasising the independent character of the U.S.A.'s action, summed up the policy which could be expected on the part of the U.S.A. towards this dispute as follows: "The United States, in keeping with the letter and spirit of the Pact of Paris and other peace obligations, undertakes at all times not only to exercise its normal influence in favour of peace throughout the world, but to contribute in every practicable way within the limitations of our foreign policy towards that end. It views with sympathetic interest the individual or concerted efforts of other nations to preserve peace or to localise and shorten the duration of the war" (*The Times*, 28th October, 1935).

and that Italy had carried out her threat of military reprisals against one or possibly more members of the League, in these circumstances would the other States Members have hastened to the assistance of the member which was being attacked and supported it to the limit of their resources? Would the citizens of Solon's City, whether they had suffered injury or not, have equally defended, not merely the victim of the reprisal, but, what is much more important, the whole system of economic sanctions and the right of the League to impose them? It was the uncertainty at the outset of the proceedings as to whether a collective military sanction would, if necessary, be employed to reinforce economic coercion that helped to prevent the embargo upon oil. It is clear, therefore, that so long as this uncertainty exists, diplomatic, financial and economic sanctions will only be undertaken in a half-hearted fashion. Their efficacy and moral effect will be weakened. But if, on the other hand, it is certain that all the members of the League are prepared to counter military reprisals by collective military action, then the programme of economic sanctions will come into play at the earliest possible moment, and will be applied with increasing intensity. Moreover, this feeling of certainty can only be engendered in the minds of States Members when practical measures have been taken in advance to pool and co-ordinate their military resources; in other words, when an International Police Force has been created under the control and direction of the League, whose sole purpose will be to protect and support the victims of aggression or reprisal.

To sum up, in the words of Mr. Baldwin :

“ It is no good spending time making up your mind whether you will or will not take part in effective action in support of the League unless you are in fact and truth in a position to take action if action should be decided on. Nor is it any good to talk about economic and financial sanctions as if they were things apart, capable by themselves of overcoming the resistance which their very application will bring forth. That is not, of course, to say that such sanctions may not be useful and important in the policy of deterrence which was one of the main reasons which led to the establishment of the League itself, but what it does mean is that such sanctions are unlikely to succeed unless the countries concerned are prepared to run the risk of war. In fact, military sanctions are an essential part of collective security, and in the long run—and on occasion perhaps the short run—they cannot be avoided.”<sup>1</sup>

<sup>1</sup> From an address to the Central Women's Advisory Committee of the National Union of Conservative and Unionist Associations in the Albert Hall on 14th May, 1936 (*The Times*, 15th May, 1936).



## CHAPTER VIII

### ARTICLE 16

*"Justice without Force is impotent : Force without Justice is a tyranny."*—PASCAL.

Import-  
ance of  
Article 16.

IT is probably true that at the moment the political world revolves around Article 16. It has become the bone of political controversy in almost every country. We are indebted to the efforts of our Japanese and Italian friends for having rescued it from its former obscurity, and it has now become the most important, and, in any case, the most discussed Article of the Covenant. Not many years ago few people had ever heard of sanctions, and fewer still had any idea what they were intended to do. We have to thank the public Press for having popularised a word which hitherto had been almost the exclusive perquisite of the legal fraternity. To-day every schoolboy possesses at least a nodding acquaintance with the provisions of Article 16. How Thomas Hobbes<sup>1</sup> and John Austin<sup>2</sup> would have rejoiced to see their favourite doctrines, transferred from the municipal into the international arena, become the topic of everyday conversation throughout the length and breadth

<sup>1</sup> See *The Problem*, p. 168.

<sup>2</sup> *Ibid.*, p. 204.

of their native land! In the seventeenth century Hobbes proclaimed that "Covenants without the sword are but words, and of no strength to secure a man at all."<sup>1</sup> Law is not law unless it can be enforced, wrote Austin many years later.<sup>2</sup> But it needed an international racketeer to bring home these truths to the British public, and we are deeply indebted to Mussolini for having enlightened us on the subject.

In every country where free thought and discussion are permitted at all controversy now rages around Article 16. It has become the battle-ground of the pro- and anti-sanctionists. On one side are arrayed the ultra-pacifists and militarists, on the other the supporters of hue and cry and the constable. The "no-force-for-any-purpose" contingent have joined hands with the international duellists—those quaint mediævalists who still believe in the ancient practice of trial by battle. Extremes often meet, although one of them may only propose to play the rôle of spectator, whilst the other holds the pistol or draws the sword. Opposed to this unholy alliance<sup>3</sup> are

The Pro-  
tagonists.

<sup>1</sup> Hobbes, *Leviathan*, Chap. XVII.

<sup>2</sup> John Austin, *Lectures in Jurisprudence or the Philosophy of Positive Law* (The Province of Jurisprudence Determined), 4th edition, revised and edited by Robert Campbell, 1873, Vol. I, p. 101. See also *ibid.*, Vol. I, pp. 81, 94, 96, 339, and Sir E. Holland, *Jurisprudence*, 6th edition, p. 38: "A law, in the sense in which that term is employed in jurisprudence, is enforced by a sovereign political authority," and further Sir John Salmond, *Jurisprudence*, 1930, p. 21: "The second requisite [of law] is enforcement by authority. A rule the observance of which is left to the good pleasure of those for whom it is laid down is not a law in this sense."

<sup>3</sup> Hansard, *Parliamentary Debates*, House of Lords, Vol. 99, 5th Series, Cols. 644, 649.

those who believe that the employment of force should be limited to the policing function in international as it is in municipal affairs. The protagonists of both sides, with the possible exception of the ultra-pacifists, will tell you that the League cannot function effectively unless, in the last resort, it can rely upon superior force to uphold the rule of law. They are agreed on this point, and the real difference between them is that the militarists and jingoes want to destroy the League, whilst the sanctionists and policemen are concerned to strengthen and develop it. Both sides realise that Article 16 is the decisive point in the struggle, and the battle ebbs and flows around the citadel of sanctions.

Article 16  
a Com-  
promise.

Article 16 in its origin was a compromise. It was a compromise between the French conception of what Rousseau, a century and a half ago, had described as "a League fully armed,"<sup>1</sup> and the Anglo-Saxon view of the "Round Table." At Versailles M. Bourgeois, the French representative on the League Commission, had demanded an International Police Force, whilst the representatives of Great Britain and America emphasised the need for a pacific procedure and disarmament. This does not mean, however, that the latter were entirely opposed to all sanctions. On the contrary, it was mainly a question of emphasis. President Wilson, in his speech introducing the Covenant to the Plenary Conference, said: "Armed force is in the background in this programme, but it is in the back-

<sup>1</sup> Rousseau, *A Lasting Peace*, Part I, trans., Vaughan, Constable, 1917, p. 58.

ground, and if the moral force of the world will not suffice, the physical force of the world shall. But that is the last resort, because this is intended as a constitution of peace, not as a League of War.”<sup>1</sup> The French proposals were intended to systematise sanctions and to provide the appropriate organisation through which they could function automatically. The Anglo-Saxon mind, with its cynical contempt for logic and precision—so often the cause of misunderstandings—stood aghast when confronted by this proposal which the Phillimore Committee had described as “a drastic pooling of sovereignty.”<sup>2</sup> Hence the compromise embodied in Article 16, which during the eighteen years of its existence has exhibited many of the defects which compromises so often inherit. The ultimate fate of this youthful prodigy is still undecided. Vilna,<sup>3</sup> Corfu,<sup>4</sup>

<sup>1</sup> Minutes of Plenary Sessions of the Peace Conference, 28th April, 1919; Miller, *The Drafting of the Covenant*, Vol. II, p. 706.

<sup>2</sup> Interim Report of League of Nations Committee of the British Foreign Office, Clause 4; Miller, *op. cit.*, Vol. I, p. 4.

<sup>3</sup> On 7th October, 1920, Poland recognised the Lithuanian occupation of Vilna, the historic Lithuanian capital. On 9th October, however, General Zeligovski seized the city, which has remained in Polish hands ever since. In 1921 the League of Nations made two suggestions for settlement, neither of which proved acceptable to the conflicting Governments.

<sup>4</sup> In consequence of the murder on Greek soil of an Italian General engaged in League duties, the Italian Government in August 1923 occupied the Greek island of Corfu. Greece appealed to the League, but expressed willingness to accept the decision of the Conference of Ambassadors. The League Council made detailed suggestions which were forwarded to the Conference of Ambassadors and accepted, but with an important modification in the matter of reparations. In this connection they appointed an Allied com-

Manchukuo,<sup>1</sup> and now Abyssinia, have provided nails for its coffin. The dictators have no use for it; in fact, they would like to destroy it. Until the Abyssinian crisis developed Great Britain did her utmost to arrest its growth.<sup>2</sup> France and the smaller Powers have carefully nursed it until, at the critical moment last September, the former deserted her protégé in exchange for a mess of Italian pottage. However, in spite of all these mishaps, and although it has been sadly neglected and starved, the sanctionist infant still survives. Having already displayed such remarkable vitality in the face of so much hostility and infidelity, having since his birth become accustomed to so many kicks and blows, and having succeeded in advertising himself throughout the Press of the world, he may yet develop into a lusty and virile adolescent. When his parents realise how useful he may become and what catastrophes he may be able to prevent, they may, even at the eleventh hour, decide that this potential giant, born in the throes of the World War, should, after all, be granted a reprieve; that his vitality should be restored, and

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mittee of inquiry, but, withholding its report from publication, they awarded Italy the full compensation demanded. The Italian Government held Corfu until the award was made.

<sup>1</sup> The action of the Japanese Government in Manchuria was condemned in the Report of the Lytton Commission and in the Report unanimously adopted by the League Assembly on 24th February, 1933. While the Assembly was reaching its decision, the Japanese armies had been threatening the province of Jehol, which was claimed by Manchukuo as part of its territory. On 22nd February a Japanese invasion on Jehol commenced, and the whole of the province was soon in the hands of Japan.

<sup>2</sup> See *Force*, pp. 179 *et seq.*

that, instead of preparing for his funeral, they should combine to encourage his growth in order that he may some day become the custodian of Peace and the guardian of Justice.

The provisions of Article 16 may roughly be classified under five headings. Three of these are contained in Paragraph 1. These are the financial and economic sanctions—"the severance of all trade and financial relations"—and, thirdly, what is described as the diplomatic sanction—"the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State." Clearly the first and second are implied in the third, because if all intercourse is cut off, there can be no trade and financial relationships.

Pro-  
visions of  
Article 16.

The fourth is the military sanction contained in Paragraph 2, which we have already quoted. As we have seen, it emphasises the interdependence of economic and policing sanctions, and declares the clear intention and implied obligations of the members of the League to support, if necessary, economic measures by military action undertaken for the sole purpose of protecting the covenants of the League—in other words, to assert the rule of law.

The fifth sanction contained in Paragraph 4 is permissive, and provides for the expulsion of a member of the League which has violated its Covenant. We have already seen that of these five sanctions only two—the financial and economic—have been imposed in the Italo-Abyssinian conflict, but in the case of the second even it was not applied in its entirety, coal, steel and oil having been omitted from the list.

Financial  
Sanction.

It seems certain that the financial blockade has already caused considerable embarrassment to the Italian Government.<sup>1</sup> Even before the Abyssinian adventure was launched, the Italian Treasury was in sore straits, and found it increasingly difficult to secure the foreign exchange necessary for the discharge of its obligations. For instance, shipments of coal and other articles to Italy from countries other than Germany and Poland ceased long before sanctions were imposed, owing to the impossibility of securing prompt payment for the cargoes.<sup>2</sup> By instituting a method of barter, trade between Germany and Italy was maintained and increased, but even this arrangement now appears to be breaking down.<sup>3</sup> Consequently the financial embargo only accelerated the process of disintegration and collapse, which was already well under way when sanctions were imposed, and the root cause of which was the profligate expenditure upon armaments and public

<sup>1</sup> According to the *Economist* of 2nd May, 1936, p. 239, and of 6th June, p. 541, Italy lost half her gold reserve in five months, from September 1935 to March 1936. The *Economist* of 2nd May, p. 239, gives the following figures: "For March complete data are not available; but according to Press reports a single consignment of 260 million lire passed from Italy to Switzerland. This suggests that Italy has exported at least 1092 million lire since the end of 1935. Since the Bank holding of lire and foreign assets was 4316 million lire on 20th October, it follows that Italy has lost practically half of her reserve in the six months since that date."

<sup>2</sup> "Already British coal exporters are refusing to make further shipments while their outstanding debts are in arrear; and it is significant that the real motive behind the suspension of gold cover is to release gold to discharge external debts" (*Economist*, 27th July, 1935, p. 182).

<sup>3</sup> See *The Financial News*, 3rd April, 1936.

services during the Mussolini régime. To this huge indebtedness and expenditure and resultant indebtedness<sup>1</sup> must now be added the cost of the Abyssinian expedition, estimated at £200,000,000,<sup>2</sup> and in the future the cost of maintaining an adequate garrison in the country, constructing its roads, developing its communications and, generally, exploiting this new Italian paradise. Any adequate return on such expenditure, at any rate for many years, is extremely problematical, and the experience of Great Britain, with its Colonies in Africa—Kenya, for instance—certainly would not appear to justify any other expectation. Abyssinia may turn out to be a financial sink. Its mineral and oil resources are a gamble; its climate is more or less pestilential; and its inhabitants scarcely friendly or well disposed. Therefore, as a financial plum, it may tax Italy's and even Mussolini's powers of digestion.

Consequently, if we consider Italy's financial burdens before the Abyssinian war, plus her expenditure during the war, plus the expenditure necessary to maintain this African Empire, then we are bound to come to the conclusion that bankruptcy is already beckoning to the dictator. No wonder that threats and expostulations have been issued from Rome against the continuation of the financial

<sup>1</sup> According to *The Economist* of 29th July, 1935, p. 181, the deficits in the Italian budget were as follows:

1930-31	.	.	.	8659	million lire.
1931-32	.	.	.	3958	" "
1932-33	.	.	.	3622	" "
1933-34	.	.	.	6458	" "

<sup>2</sup> *The New York Times* of 21st May, 1936, gives one billion dollars as the estimated cost of the Italian campaign.



embargo.<sup>1</sup> The Abyssinian shoe is beginning to pinch, and the sanctionist pressure must be relieved; otherwise the dictator and his African Empire may founder together.

It is true that the churches of Italy have not yet been robbed of their gold. Mothers and widows have already been compelled to sacrifice their gold rings,<sup>2</sup> in order to pay for the mustard gas and other accompaniments of civilisation in its march through the dark Continent. But the Vicar of Christ has not yet been despoiled. Apparently he can only be saved through the intervention of international financiers. If the financial restrictions are removed, will the bankers of Great Britain and France be allowed to put Mussolini on his feet again? And if they stand aside, will the money-lenders in Wall Street be permitted to step into their shoes and to saddle more firmly than ever upon the backs of the Italian people and the tribes of Ethiopia a dictatorship which, at the moment, appears to be on the verge of bankruptcy?

What  
Guaran-  
tees?

The banking fraternity cannot be trusted to do sound business because, as we know, they have

<sup>1</sup> "I know what you can give and what the armed forces of Italy and all the Italians can give if those who were described as the 'Midsummer Madmen' are not restored to their senses or at least reduced to impotence."—Signor Mussolini in a speech on the occasion of the centenary of the Bersaglieri (*The Times*, 22nd June, 1936). See also *The Economist*, 6th June, 1936, p. 541.

<sup>2</sup> The Queen of Italy set the example to the Italian people to give their golden wedding-rings to the State in exchange for iron ones (*The Times*, 19th December, 1935). It was estimated that gold to the extent of about 10 million lire was collected in Italy in this way (*The Economist*, 6th June, 1936, p. 541).

already lent vast sums to Mussolini,<sup>1</sup> and have helped to finance the re-armament of Germany.<sup>2</sup> Some of these loans have become frozen<sup>3</sup>; in any case, they cannot be subsequently recovered except with great difficulty and possible loss. If left to their own devices, the financiers may repeat their performances and pour new money down the Abyssinian sink. They may still, as they have done in the past, rely upon guarantees and securities which will probably prove to be worthless.

How are these loans to be spent? We shall be told that they are necessary to reconstruct trade and revive commerce with Italy. What guarantee is there that they will be used for this purpose, and that they will not be employed to increase still further the armaments of Italy, to conscript Black troops in Abyssinia, and to pursue a military policy directed against the League, and particularly against the British Empire? Whatever fund Mus-

<sup>1</sup> See George Seldes, *Sawdust Caesar*, London, 1936, p. 296.

<sup>2</sup> See John Gunther, *Inside Europe*, London, 1936, p. 113.

<sup>3</sup> Illuminating information regarding British credits which have become "frozen" in Italy and Germany is to be found in two monographs, compiled with the assistance of the Information Department of the Royal Institute of International Affairs and issued in 1935, entitled *The Economic and Financial Position of Italy and Germany's Foreign Indebtedness* (C. R. S. Harris).

Long-term loans, short-term loans (which are of negligible amounts), and commercial debts due from Italy reach a total of nearly £3,500,000. In the case of Germany the sums involved are far greater, short-term loans amounting to between £40 and £50 millions, whilst long-term loans account for a further £55 millions. The commercial debts due from Germany have now been settled by the retention of a proportion of the sterling proceeds of German exports sold in Great Britain.

solini may have at his disposal, we may be sure that the bulk of it will be spent on military preparations for his next adventure, wherever that may be. But it will be said that it is necessary to bolster up and finance Mussolini in order that Italy may be able to pull her weight in the tug-of-war with Germany. But again, we ask, what guarantee is there on which side of the rope Italy proposes to pull? <sup>1</sup>

Hitherto, Mussolini has been absolutely consistent in one course only. He has always sold himself to the highest bidder.<sup>2</sup> If Germany can double the stakes, the Duce will be found walking arm in arm with Hitler jingling the Frenchman's and Englishman's gold in his pockets. When the dictators and international financiers begin putting their heads together, it behoves other people to be on the lookout for trouble.

Hence the danger of lifting the financial sanction is that, as a result, fresh loans and credits, with or without the authorisation of Governments, may be made to Italy. Without such assistance, she will probably drift into bankruptcy. Mussolini will disappear, and with him the most potent enemy of the League, the avowed hater of British democracy and the greatest menace to the peace of Europe.

Economic  
sanction.

During the six months of its application, no one will deny that the economic sanction did not work

<sup>1</sup> Recent examples have been furnished by the visits to Berlin of Countess Ciano, wife of the present Italian Foreign Minister, General Pelligrini, Director General of Italian Civil Aviation, and General Valle, the Italian Under-Secretary of Air (*The Times*, 18th and 27th June, 1936).

<sup>2</sup> See George Seldes, *Sawdust Caesar*, London, 1936, pp. 42 *et seq.* and pp. 345 *et seq.*

satisfactorily, having regard to the fact that, as we have seen, it had to be improvised at a moment's notice, and that it was only partially applied, coal, steel and oil having been excluded from its operation.

To summarise its results, Italian exports decreased from December 1935 to March 1936 by 50 per cent., whilst by January 1936, as compared with January 1935, Italian imports had diminished by 49 per cent.<sup>1</sup>

We now come to what has been described as the diplomatic sanction—"the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking state."

Diploma-  
tic Sanc-  
tion.

The moral effect which would have been produced had this provision been carried into effect both in the case of Japan and Italy would have been immeasurable. To isolate the aggressor, to cut him off completely from all intercourse with other nations, would, at the outset, bring home to his people in no uncertain way not only the legal authority of the League, but also the moral condemnation of its fifty-eight States Members.

In this case the moral factor is probably more important than the material damage and inconvenience which social and commercial ostracism in the international sphere implies. If the States Members of the League had unanimously resolved that after a certain date their Ministers and Ambassadors should be recalled from Rome, that there should be no further intercourse of any kind between their

<sup>1</sup> *The Economist*, 2nd May, 1936, and 6th June, 1936.

citizens and the aggressor nation, that no ships belonging to their nationals should be allowed to enter an Italian port, and that all postal services, railway, motor and air traffic with the aggressor should be suspended, then indeed it would have been realised that the League was in earnest, and that its States Members were determined that the rule of law should prevail. Had such action been taken, Signor Mussolini could not have insulted the League by proposing that the Chairman of the Committee of Thirteen should undertake a special pilgrimage to Canossa, because there would have been no means of transporting him thither.<sup>1</sup>

And until its members are prepared to take these drastic measures they are only playing into the hands of the dictators, and helping to dig the grave of the League. Moreover, by refusing to carry out the terms of the Covenant which they have all signed, not only do they fail to prevent war, but they also prolong the period of hostilities and slaughter, because they excite vain hopes in the minds of the victims of aggression. This in itself is a criminal proceeding, because it is an exhibition of rank cowardice and undermines the already attenuated fabric of mutual confidence which ought to exist amongst the members of the League.

Defaulting  
States.

In the present case it may be argued that the defection of some of the smaller States Members, such as Switzerland and Austria, would have en-

<sup>1</sup> At the request of the Committee of Thirteen, Señor de Madariaga approached the Italian Government regarding negotiations for peace, and Signor Mussolini thereupon invited Señor de Madariaga to Rome (*The Times*, 6th April, 1936).

dangered the efficacy of this sanction.<sup>1</sup> It is doubtful, however, whether even these States, despite Switzerland's tradition of strict neutrality and Austria's commitments to Mussolini, would have been prepared to risk their status and membership of the League by taking sides with the aggressor when they realised that the League really meant business. Had they done so, the proposal put forward by the representative of the U.S.S.R. at the Meeting of the Committee of Eighteen on 11th October, 1935, could have been put into operation—namely, that the embargo imposed upon the aggressor should also be applied to the defaulting countries.<sup>2</sup> They in turn would also have been subjected to complete ostracism. "He that is not for us is against us," and there can be no neutrality amongst members of the League where aggression is concerned. Germany, of course, was free, as a non-member, to do as she pleased. Despite the lack of statistics,<sup>3</sup> it is well known that her exports to Italy increased enormously. She gave no support to the sanctionist measures of the League, and her rulers took no pains to conceal their satisfaction when the sanctionist front collapsed. Consequently

<sup>1</sup> According to the estimates in *The Economist*, 6th June, 1936, p. 541, Switzerland reduced her purchases from Italy by about half, Austria continued to buy from Italy at about the normal scale, and Hungary increased her purchases somewhat.

<sup>2</sup> *League of Nations Official Journal, Special Supplement*, 145, p. 40.

<sup>3</sup> It is difficult to collect accurate information regarding the increase of German exports to Italy, as Germany and Italy have suppressed publication of detailed particulars (see *The Economist*, 28th December, 1935). Statistics regarding the movement of transport are not yet available.

it is difficult to understand why they should now propose to return to Geneva and become once more the signatories of a pact which they have done their best to undermine during the past twelve months.

The enforcement of the diplomatic sanction, including the severance of all intercourse between the members of the League and Italy, would also have produced a profound effect upon the outlook and mentality of those nations which are apt to look upon Geneva merely as a pious aspiration and an idealistic dream. These lukewarm and irresolute members of the League fraternity would have been compelled to come out into the open and display their true colours. Alas that France, a traditional friend and supporter of the rule of law, should have joined the ranks of the irresolute, and should have connived at an act of sabotage which may ultimately engulf her in confusion and disaster. Well may her rulers recall the sage advice of Rousseau: "Realise Saint-Pierre's commonwealth of Europe for a single day, and you may be sure that it will last for ever, so fully would experience convince men that their own gain is to be found in the good of all."<sup>1</sup>

expul-  
sion.

The last section of Article 16 provides for the expulsion of the aggressor in the following terms:

"Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by the vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon."

<sup>1</sup> *A Lasting Peace Through the Federation of Europe*, trans. Vaughan, p. 93.

There is, of course, a natural reluctance to expel any country from the League, and such a step should never be taken unless it can be shown to be imperative in order to uphold the rule of law. The crucial question is this. Is it better that this international institution should be exclusively composed of nations who are prepared to honour their signatures, to renounce militarism, to relinquish war as an instrument of policy, who are willing to pool their resources in order to maintain the rule of law and to submit their disputes to a procedure of peaceful settlement, or, on the other hand, is it better that its membership should be open to all and sundry, whatever their actions and policies may be, however often they may dishonour their signatures, tear up treaties and refuse to produce any guarantees for the loyal observance of their duties and responsibilities as members of an international authority?

To join a talking-shop at Geneva is one thing; to become a member of an international authority is quite another. If the latter has become a necessity, it is not merely a question of counting heads, but hearts—sincerity, honesty and loyalty to the New Commonwealth of Nations are the things that really matter. Nations imbued with these sentiments will not hesitate to give mutual guarantees for their future good behaviour. In other words, they will be prepared to submit themselves to the rule of law which involves participation in the creation of an Equity Tribunal and an International Police Force. A League, though relatively small in numbers, but whose members are sincerely animated by a supreme common purpose, is worth more, and will exert a far

Heads  
versus  
Hearts.



greater influence and authority, than a huge collection of nations whose union, in the words of Rousseau, "is formed and maintained by nothing better than chance." You cannot mix oil and water. The policeman and the burglar are not necessarily one and the same person, and a distinction must be drawn between their avocations, even in the international sphere.

he Case  
Italy.

It is true that the expulsion proviso in Article 16 is only permissive. But why, it may be asked, was it so completely ignored in the Italo-Abyssinian affair? How can the members of the League ever expect to make its writ run if the representatives of the aggressor are to be treated on almost precisely the same terms as hitherto. If Article 16 means anything, it means that the aggressor has been ostracised and isolated, which, in an international sense, is tantamount to sending him to prison. Why, then, should he be treated as if he still enjoyed the status of a warder or policeman? Why, in the recent proceedings in London, when it was proposed to include an Italian contingent in a Police Force for the Rhineland,<sup>1</sup> should he be offered a ticket-of-leave and a policeman's uniform ostensibly to prevent another nation from committing a crime far less

<sup>1</sup> See the text of the proposals drawn up by the representatives of Belgium, France, the United Kingdom of Great Britain and Northern Ireland, and Italy on 19th March, 1936 (Cmd. 5134, 1936, pp. 3 *et seq.*).

The humour of the situation was further increased by the fact that it was left to Signor Grandi, the Italian representative at the Council meeting in London, to point out the "obvious contradiction between the position of a country subjected to sanctions and its task as a guarantor Power" (*The Times*, 19th March, 1936).

heinous than the one which he himself was perpetrating at that moment? It is idle to suggest that the same nation can play the rôles of burglar and policeman simultaneously, and any collective system which is founded upon such an assumption is bound to become the object of ridicule and contempt, and will perish miserably, as it deserves to do. Moreover, it is obvious that any institution whose rules and regulations can be flouted with impunity will soon be regarded as valueless by its members. Expulsion involves a stigma, and unless such moral condemnation is forthcoming, membership of the League will soon be confined to delinquents and law-breakers. Therefore, if collective security is to be realised, there can be no half-measures, and the penalties enumerated in Article 16 must be carried out in their entirety.

No doubt we shall be told that to banish Italy from the League would only result in driving her into the arms of another Great Power—Germany—which, at present, remains outside. This, no doubt, is a risk which the members of the League will have to run. They will have to run it in any case, whether Italy remains in the League or not. The point they have to decide is whether the solidarity of the purged and, let us hope, reformed League, inspired by a moral purpose and equipped with those institutions—an Equity Tribunal and an International Police Force—which are capable of asserting the rule of law, is worth more than Mussolini's bombers and poison gas. Is it more likely that the League will be able to prevent another European War if it harbours a traitor in the camp or expels him? The answer depends upon

The Risk.

the willingness of the European members of the League to submit themselves to a revised and remodelled constitution, under which great and small States alike are prepared to pool their military resources and to establish a European Air Police Force with a superiority of, say, five to one in bombers, in comparison with the air force of Italy.

the Com-  
pensating  
factor.

To redress the balance, the loss of Italy as a member of the League can be more than compensated by the centralisation and organisation, under an international authority, of the combined resources, financial, economic and military, of its remaining members.

This is a feasible proposition, because, in addition to the four Great Powers, France, Germany, Italy and Great Britain, there are twenty-three smaller European States whose combined resources are approximately equal to those of the four Great Powers. If we take as a guide the *barème* formula,<sup>1</sup> which, it will be remembered, is based upon the factors of population, wealth, etc.—in other words, ability to pay—we find that the smaller Powers are rated at a total of 306 units, and the four Great Powers at 323. This means that the existing contributions of the former towards the maintenance of the League

<sup>1</sup> The “*barème*” formula is the standard of measurement adopted in 1921 by a Committee appointed by the Assembly according to which the proportion of the expenses of the League which are to be borne by each member is assessed. The basis of the “*barème*” formula is the relative economic strength or the real taxable capacity of the various nations constituting the League, and is consequently founded on the principle of equality of sacrifice. For further information on this subject, see *The Problem*, pp. 407 and 746 *et seq.*

are almost equal to the contributions of the four Great Powers.

It follows that if a European Air Police Force was constituted under the control of the League, the twenty-three smaller States would contribute half the cost of its upkeep and maintenance. Consequently, if Italy was expelled from the League, the resources of its remaining members would be represented by 490 units, of which France and Great Britain would contribute between them 184.<sup>1</sup>

Assuming, therefore, that these two Great Powers were prepared to take the lead in systematising and organising the sanctions provided for in Article 16, the success or otherwise of the scheme would depend upon the degree of co-operation on the part of the twenty-three smaller Powers.

It will be remembered that with the exception of Albania, Austria and Hungary, these States Members were prepared to join in the sanctions imposed upon Italy last year. Is there any reason to suppose that they would not equally be prepared to combine in the constitution of a European Air Police?

At the moment Germany stands outside the League, but Herr Hitler has been profuse in his protestations of peace, and has even offered to return to Geneva. Why not take him at his word? The acid test of his sincerity, as indeed for all other members of the League, will be his willingness to hand over his bombers to the International Air Police, and to rely upon a peaceful procedure, an Equity Tribunal, for the adjudication of his grievances. If the rule of

Other  
States.

<sup>1</sup> *Ibid.*, p. 752.

law is to prevail, there is no other solution of the problem. Obviously it must be the same law for all, the same procedure and the same sanctions. Under this arrangement the solidarity of Europe would be recognised, and an inner circle would be constituted within the framework of the League, containing the seeds of a United States of Europe.

Such a combination would be able to co-operate with the remaining States Members comprised in what may be described as the outer circle of the League. It could count upon the moral support of Russia and of all those States Members outside Europe who have identified themselves with the rule of law. Even the benevolent neutrality<sup>1</sup> of the United States could be anticipated, because it is clearly in her interests that Europe should put her own house in order at the

<sup>1</sup> On 31st August, 1935, the U.S.A. Neutrality Act came into force. The main points of the Act are :

- (1) An embargo upon the export of arms, munitions, and implements of warfare to all belligerents;
- (2) A system of registration of munitions manufacture and of licensing of munitions exports under the supervision of a National Munitions Board;
- (3) Delegation of power to the President to
  - (a) withhold protection from any American citizens travelling on any vessel of any belligerent nation if he considers it advisable;
  - (b) prohibit the entrance of any foreign submarine during war into American ports or territorial waters except under conditions prescribed by the President;
  - (c) require bond of vessels suspected of leaving an American port for the purpose of delivering up to any belligerent warship or supply ship men or fuel, munitions or other supplies.

See Raymond Leslie Buell, *American Neutrality and Collective Security*, Geneva, 1935, for a full survey of this question.)

earliest opportunity. Moreover, the day may not be far distant when a free and liberated Italy, the Italy of Mazzini and Garibaldi, will be welcomed back to Geneva to play, let us hope, a prominent part in a reconstituted League which her swashbuckling dictator had helped to bring into being.

“Twaddle,” “bunkum,” “visionary” and “Utopian,” say the “Sawdust Cæsars” everywhere. “Blood and iron” is the recipe: “Each one for himself and God for us all, and the devil take the hindmost,” is the slogan. In other words, Europe in ashes: Rome, Paris, London and Berlin a smouldering heap of ruins. That, in the twentieth century, is the alternative to the rule of law.

But let us suppose that, at the outset, both Germany and Italy remain outside the League. As we have seen, the potential resources of its existing members are represented by 490 units. Italy and Germany combined represent 139. It appears therefore that, according to this computation, the members of the League would still possess a potential superiority of force, if it is properly centralised and strategically organised. Even allowing for the non-co-operation of a few of the smaller States Members, there would still be a considerable margin of superiority.

The task of preparing a practical plan embodying the necessary arrangements can be entrusted to the Commission of Military—henceforth Policing—Experts<sup>1</sup> already created under Article 9 of the Covenant, whose advisory duties include making provision “for the enforcement by common action of inter-

A Practi-  
cal Plan.

<sup>1</sup> See Chap. VII, pp. 74–75, *ante*.

national obligations.” The framers of the Covenant sketched the outline of the organisation for peace, but it is the duty of their successors to fill in the details, and in the light of experience to clothe Article 16 with flesh and blood.

3 New  
stem  
sus Al-  
ices.

To do so would not be to constitute a new alliance, as some of our friends would have us believe. On the contrary, it would be to develop and amplify a new system of international relationships which was introduced into the world eighteen years ago. The price we paid for it was the price of the World War. If we allow this system to go up in smoke, we shall be held accountable by future generations, who will curse us for our folly and intransigence:

An alliance is directed against a third party, but an organisation created to sustain the rule of law is directed against no one, except the aggressor or defaulter, whoever he may be. All States are free to join this organisation on terms of equality—equality in the sight of the law—and the guarantees demanded by Article 16 are the same for all. That is the difference between an alliance in the old sense and the new system inaugurated by the Covenant.

is  
ticle 16  
iled ?

Consequently, when we are told that the League has failed in the Italo-Abyssinian conflict, and that Article 16 has proved to be a broken reed, we are entitled to reply that it has never been tested or tried. As we have seen, of the five provisions of Article 16, only two—the least innocuous—have been put into operation, and one of these—the economic sanction—only partially.

It is not true that the League, as an institution,

has failed. Failure lies at the door of the Governments who compose it, because they dishonoured their covenanted obligations, not only last autumn, but during the eighteen years which have elapsed since the Armistice was signed. The principles and provisions embodied in the city charter are clear and unmistakable. It is the citizens who have been false to their vows, because they have refused to pursue and punish injustice, whether they had suffered injury or not. Further, they have failed to implement their charter by creating those institutions which alone will prevent injustice, through the administration of Justice. The time is short; the sands are running out; the armament race is in full swing. Therefore, let the citizens lose no time in seeing to the best protection of their city.



## CHAPTER IX

### THE SUEZ CANAL

*"The use of force is justifiable when it is ordered in accordance with law by a neutral authority in the general interest."*—  
BERTRAND RUSSELL.

probable  
effect of  
closing  
the Canal.

THE imposition of sanctions in the case of Italy raises once more the problem of the status of the Suez Canal. Had the States Members of the League decided to close this international water-way to Italian vessels engaged in the transport of troops and munitions to East Africa, the Italo-Abyssinian War would never have taken place. In all probability the League would have won a signal and bloodless victory in vindicating the solidarity and effectiveness of the collective system. Moreover, this result would have been achieved at a minimum cost to all concerned, including the aggressor. This assumption cannot, however, be regarded as valid unless it is supported by three propositions :

- (1) That the members of the League possessed the right to close the Suez Canal ;
- (2) That, if necessary, such action would have been supported by collective military sanctions ; and
- (3) That the Italian claims for economic expansion in Africa should be submitted, without further delay, to the adjudication of an Equity Tribunal.

In considering the first, we shall probably conclude that it is for the jurists to determine, having regard to all the circumstances of the case, whether the League possesses the necessary powers to enforce this sanction. An advisory opinion from the Permanent Court of International Justice <sup>1</sup> would have settled this point of international law, and decided whether the provisions of Article 20 of the Covenant are such as to over-ride the stipulations of previous treaties dealing with the subject.

Advisory  
Opinion.

The status of the Canal was defined in the Convention of Constantinople signed in 1888. It stipulated, *inter alia*, that "the Suez Maritime Canal should always be free and open in time of war as in time of peace to every vessel of commerce or war, without distinction of flag. Consequently the high contracting parties agree not in any way to interfere with the free use of the Canal, in time of war or in time of peace. The Canal shall never be subjected to the exercise of the right of blockade." <sup>2</sup> Article 20 of the Covenant reads as follows :

1888 Con-  
vention  
and Ar-  
ticle 20.

"The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof."

<sup>1</sup> According to Article 14 of the Covenant, the Court may "give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly." On the question as to whether the demand of the Assembly or Council for such an advisory opinion has to be made by a unanimous or majority vote, see the Monograph of Salo Engel, Art. 5 and Art. 14, Satz 3 der *Völkerbundsatzung*, Annemasse, 1936.

<sup>2</sup> Article I, Convention of Constantinople, 29th October, 1888.

It would therefore appear that all obligations *inter se*—that is to say, between the members of the League—should be abrogated if they are inconsistent with the terms of the Covenant. With the exception of Germany,<sup>1</sup> all the co-signatories of the Convention of 1888 are members of the League, and are therefore bound by the provisions of Article 16, which, as we have already observed, requires “the severance of all trade or financial relations and the prohibition of all intercourse between their nationals and the nationals of the Covenant-breaking State.”

Moreover, during the World War Article 1 of the Convention was disregarded, and the Canal was closed to vessels belonging to the Central Powers, and was defended by British forces against an attack on the part of Turkey. Consequently, the Convention of 1888 calls for interpretation and revision in the light of events which have occurred since that date, and in order to bring it into conformity with the Covenant of the League.

In any case, an advisory opinion by the Permanent Court is urgently called for, because so long as uncertainty exists, so long will conflicting claims be urged, and the Canal will be treated as an international shuttle-cock.

<sup>1</sup> Although Germany is not a member of the League, it must be remembered that as a signatory of the Treaty of Versailles, of which the Covenant forms a part, she has recognised the activities of the League to the full extent to which they are laid down in the Covenant (Herbert Kraus, *Vom Wesen des Völkerbundes*, 1920, pp. 38 *et seq.*; von Bülow, *Der Versailler Völkerbund*, 1923, pp. 185, 186–278; Schucking-Wehberg, *Die Satzung des Völkerbundes*, 1931, Vol. I, pp. 37 *et seq.*).

Should the Court decide that the League has no power to deny the use of the Canal to an aggressor, then it will be necessary for the Council and Assembly to consider the feasibility of internationalising the Canal in the interest of collective security and the rule of law. Strategic points of such vital importance in the application of sanctions should not be entrusted to the exclusive control of any individual State Member or private corporation.

Inter-  
nationali-  
sation of  
Canal.

It should be garrisoned and defended by an International Police Force, thus ensuring its employment in the service of all and as a potent instrument in defence of justice and peace.

A Defen-  
sive I.P.F.

This, apparently, was also the view of the co-signatories of the 1888 Convention, which stipulates that the defence of the Canal should, in the last instance, be referred to the concert of Europe.<sup>1</sup> In this connection it is interesting to note that in 1882 the Italian Government suggested that the Canal should be protected by an International Force.<sup>2</sup> Such a defensive force could be constituted

<sup>1</sup> According to Article 9 of the Convention of Constantinople, 29th October, 1888, "the Egyptian Government shall, within the limits of its powers resulting from the Firmans, and under the conditions provided for in the present Treaty, take the necessary measures for insuring the execution of the said Treaty. In case the Egyptian Government should not have sufficient means at its disposal, it shall call upon the Imperial Ottoman Government, which shall take the necessary measures to respond to such an appeal; shall give notice thereof to the signatory Powers of the Declaration of London of 17th March, 1885; and shall, if necessary, concert with them on the subject."

The signatories of the Convention were Great Britain, Spain, France, Germany, Italy, the Netherlands, Russia, and Turkey (see Raymond Leslie Buell, *The Suez Canal and League Sanctions*, Geneva, 1935, pp. 4-7).

<sup>2</sup> *Ibid.*, p. 4.

on the lines of the Saar Police Force,<sup>1</sup> and could be controlled by a Commission appointed by the Council of the League to administer the Canal zone, just as the Saar Commission was responsible for the administration of that territory during the fifteen years when it was under the control and supervision of the League. As an alternative a Mandate might be given by the Commission to Great Britain to act as the international policeman on behalf of the League, say, for a period of ten years, at the end of which this arrangement could be reviewed. It might also be agreed that the cost of the services undertaken by Great Britain should be borne by the Commission acting for the League, and that Great Britain should, in return, undertake to recruit for this purpose an international force constituted on the lines of the French Foreign Legion.<sup>2</sup> At the

<sup>1</sup> The Saar Police Force was organised by the Council of the League to maintain order in the Saar during the 1935 Plebiscite. The Force was composed of British, Italian, Dutch, and Swedish units, numbering 3300 men, and was placed under the command of a British General. The theoretical disadvantage of such a system consists in the fact that if any of the national units had chosen to disobey orders, the only redress would have been to apply to the League for such units to be withdrawn. (For further details, see Lt.-Col. A. H. Burne, "The International Force in the Saar," published in the pamphlet of The New Commonwealth Society, *Policing the Saar*, London, 1936, pp. 5 *et seq.* See also the *League of Nations Official Journal*, 1934, pp. 1708 *et seq.*, 1729 *et seq.*, 1762 *et seq.*, and 1814 *et seq.*)

<sup>2</sup> The French Foreign Legion was founded by Louis Phillippe on 9th March, 1831. It was organised for service in Africa, and is recruited on French soil. Anyone between the ages of eighteen and forty who is physically fit is eligible for enlistment. In 1933 the Legion numbered 20,000 men, 17,500 serving in Morocco, Algiers, Tunis, and Syria, 2500 in Madagascar and Indo-China. Before the War

conclusion of the ten years period, assuming that in the meantime the League has regained its influence and prestige and has developed into an international authority, this force might be transferred to the control of the Commission.

No plan of internationalisation, however, can bear the stamp of permanence unless members of the League are prepared to guarantee it, and if necessary to render military support to the defensive international force entrusted with the custody of the Canal. This means that they will be willing to apply collective military measures against any nation should the latter attempt to seize or force the Canal in defiance of the League.

Necessity  
for  
Mutual  
Guarantee.

Thirdly, it would be manifestly unjust, and contrary to the conception of collective security, if the employment of such a powerful and far-reaching sanction was merely used to bolster up the *status quo*. We have already seen<sup>1</sup> that no sanction or police force of any kind can become a permanent guarantee of peace unless, simultaneously, a peaceful procedure has been agreed upon for effecting changes in the public law—that is to say, for the revision of

Revision  
of  
Treaties.

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the Legion consisted of two regiments. During the War a third was raised, and since the War two more infantry regiments and one of cavalry have been formed. In the view of the French Government, the contracts between the legionaries and the authorities enlisting them are regarded as contracts of public law (see Hans Walter Lehmann in *Wörterbuch des Völkerrechts und der Diplomatie*, 1924, Vol. I, pp. 328 *et seq.*). The *Armaments Year Book* for 1935, published by the League of Nations, does not contain any information regarding the composition and strength of this body (see, however, G. W. Price, *In Morocco with the Foreign Legion*, 1934).

<sup>1</sup> See Chap. VI, *ante*.

treaties and the settlement of political disputes. Sanctions and equity go hand in hand, and the reign of law can never become a reality unless both are included in the system of collective security. This dictum cannot be overlooked in considering the future status of the Suez Canal, which the Italo-Abyssinian conflict has once more precipitated into the forefront of international problems.

## CHAPTER X

### MILITARY AND POLITICAL REPERCUSSIONS

*"For as amongst masterless men there is perpetual war . . . so in States they live in a condition of perpetual war, and upon the confines of battle with their frontiers armed and cannons planted against their neighbours round about."*—  
THOMAS HOBBES.

THE vaunted march of civilisation in Ethiopia has also its tactical lessons. In this campaign poison gas and the aeroplane have come into their own, as Marshal Foch prophesied when he said:

Foch's  
Prophecy.

"The military mind always imagines that the next war will be on the same lines as the last. That has never been the case and never will be. One of the great factors in the next war will obviously be aircraft. The potentialities of aircraft attack on a large scale are almost incalculable; but it is clear that such attack, owing to its crushing moral effect on a nation, may impress public opinion to the point of disarming the Government and thus become decisive."<sup>1</sup>

The military minds in this case, both in Great Britain and France, were guilty of gross miscalculations, which unfortunately were reflected in the policies of their Governments. As we have seen, they imagined that the Abyssinian conflict would probably be prolonged for several years, during

Miscalcu-  
lations of  
the  
Staffs.

<sup>1</sup> *The Times*, 21st March, 1922.



which period financial and economic sanctions would be decisive. In these calculations they apparently forgot two things: first, that poison gas had been used in the World War; and secondly, that pacts, treaties and conventions imposing restrictions upon the conduct of war have usually been disregarded on the plea of military necessity, if one of the belligerents considered it to be in his interests to do so. As Foch prophesied, "the potentialities of aircraft attack are almost incalculable." In Abyssinia, combined with poison gas, "it disarmed the Government (the Emperor), and thus became decisive."

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3-  
r. Even in a sparsely populated country, endowed by nature with the protection of vast forests, rugged mountains and broad rivers, the bomber has proved itself to be the decisive weapon. The civilian population has been cowed; the army has lost its morale; towns and villages have been razed to the ground. Pacts and conventions have been ruthlessly disregarded, and once more they have become "a trap for the unwary and a signpost for the guilty." The ubiquitous aeroplane has carried death and destruction everywhere. Supremacy in the air is therefore the decisive factor.

On the other hand, it will be argued that the Emperor possessed no air force to counter the attacks launched upon his country from the Italian air-bases. This, no doubt, is true, but even if he had it does not follow that the results, measured in the wholesale destruction of life and property, would have been different. We have been told on high authority that the bomber will always get

through, and that up to the present the only defence against air attack is reprisals.<sup>1</sup>

Consequently, if the contest were confined to two countries whose air forces were approximately equal, or to two evenly matched groups, the process of mutual annihilation could only end in the complete destruction of both belligerents. Their armies and navies would be left high and dry because the "home front" would have collapsed behind them.

Air Warfare in Europe.

Let the methods and tactics of warfare employed in Abyssinia be applied to the crowded cities of Europe, to its factories, mines, ports and nerve centres; let the devastating rain of high-explosive and incendiary bombs, and the clouds of poison gas descend upon its inhabitants, and in a few weeks, probably in a few days, there would be chaos and pandemonium in all the belligerent countries. Given a sufficient number of bombers, and this intensive process of mutual annihilation, accompanied by incendiarism, starvation, asphyxiation and disease, could only culminate, as Mr. Baldwin, Mr. Winston Churchill and others have prophesied, in the complete destruction of society and the overthrow of every Government engaged in this wholesale extermination.<sup>2</sup> The combatants would be reduced to

<sup>1</sup> Lord Lloyd, House of Lords, 29th November, 1933: "It is in the counter-attack, the swift and strong counter-attack, that you get the main safeguard for a great civil population huddled together in towns" (Hansard, Parliamentary Debates, House of Lords, Vol. 90, Col. 173). See also General Groves, *Behind the Smoke Screen*, pp. 168-169; M. Laurent Eynac (M. Eynac held office as Air Minister in successive French administrations) as quoted in Groves, *op. cit.*, p. 188.

<sup>2</sup> See Mr. Baldwin, House of Commons, 10th November, 1932 (Hansard, Commons Debates, Vol. 270, Col. 632);

poverty and chaos. Nor would there be any victor or vanquished, for in such a catastrophic struggle neither side could emerge as the conqueror. There would be no reparations, no indemnities and no hegemony—only stalemate.

Policy of  
Great  
Britain.

That is the prospect which may confront Europe, because its citizens, whether they suffered injury or not, refused to live up to their covenanted obligations, and thus failed to bring to an end the perpetration of a gross act of injustice upon a black and almost defenceless people in the wilds of Africa.

In these circumstances, where members of the League are solely concerned about their own injuries, security or interests and repudiate their responsibility to pursue and punish injustice as partners in a collective system, it may well be that this system will break down in Europe, as it has already done in Africa. If a short-sighted view of the policy which national interests demand supplants the principle of collective action in support of the rule of law, then this view may be reinforced by the tactical results of the Abyssinian campaign. M. le Bon has told us that adaptation is the secret of existence.<sup>1</sup> Consequently, if we persist in living in an anarchic world,

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Mr. Winston Churchill, *The World Crisis : The Aftermath*, pp. 451-454; General Groves, *Behind the Smoke Screen*, pp. 143-144; General von Altrock, *What Would be the Character of a New War?* p. 360; M. Rougeron, *L'Illustration*, 12th September, 1931.

<sup>1</sup> See Le Bon, *The World in Revolt*, p. 57: "Nature is constantly confronting her creatures with this imperious dilemma: to achieve adaptation or to disappear"; and p. 64: "The necessities of adaptation have always governed the world and will, without doubt, dominate it more and more in the future."

new conditions of warfare and their probable results may demand new policies. For instance, it does not follow that because Great Britain intervened in the last European conflict, she will feel compelled to do so again, if the Covenant and the collective system go by the board.

In 1914 Great Britain entered the war to prevent the hegemony of Germany. True to her traditional policy, she sought to protect the Low Countries from German domination. Antwerp might become a pistol pointed at the heart of England. But in 1936 these reasons have no longer the same validity. Strategically Great Britain is no longer an island. The pistol can be discharged with equal accuracy and with almost equal results from beyond the Rhine. Moreover, the destructiveness of modern weapons and the defencelessness of the civil populations against violence from the air preclude either of the belligerents from securing an overwhelming victory. Consequently, the spectre of hegemony on the Continent need no longer haunt the bedside of Great Britain, and if other nations choose to go to war, and to obliterate each other, there appears to be no valid reason why she should involve herself in entanglements and alliances which have no connection with the rule of law and the system of collective security. This is one of the military lessons of the campaign in Abyssinia.

It may be true that a policy of isolation is a policy of despair; it offers no hope of any real security, because under this chaotic regime we know not the day nor the hour when we may be attacked and obliterated. On the other hand, it is preferable to

Isolation,  
Alliances  
or Col-  
lective  
Security?

a system of alliances and *ententes*. That is the most that can be said for it. It is obvious that the only hope of salvation is to be found in the rule of law, in which the moral factor, the just and equitable settlement of all disputes by peaceful means, is reinforced by the maximum superiority of force in the exercise of the police function.<sup>1</sup> This combination alone will suffice to deter nations from resorting to the ancient practice of trial by battle. It is the only way of preventing Europe from committing suicide, and nothing short of an International Air Police Force<sup>2</sup> will give us that guarantee of security and mutual confidence which the nations of this continent so urgently need to-day.

Political  
Repercus-  
sions: The  
League.

League intervention in any part of the world must necessarily be followed by repercussions upon the affairs of Europe. The League is an organism whose growth and development are measured by the relative success or failure it achieves in whatever part of the world it is called upon to act. If its States Members refuse to implement their responsibilities under the Covenant in Africa, and consequently

<sup>1</sup> See *Force*, pp. 69 *et seq.* and 186 *et seq.*

<sup>2</sup> See on this question the Monograph of Rear-Admiral R. N. Lawson, *A Plan for the Organisation of a European Air Service*, published by the New Commonwealth Institute, London, 1935; Carlin M. Capper-Johnson, *The New Commonwealth Quarterly*, 1935, pp. 44 *et seq.*; and the publications of the New Commonwealth Society, *An International Air Force: Its Functions and Organisation: Memorandum prepared by the Executive Committee of the New Commonwealth for the International Congress in Defence of Peace at Brussels, February 1934*; and *The Functions of an International Air Police: An Examination of the Uses and Functions of an Aerial International Police Force*, 1936.

the League is unable to fulfil its true function—the administration of justice and the prevention of war—then, whether they have suffered injury or not, the cynical policy of non-fulfilment may deprive them of every advantage which the collective system offers in Europe. No longer can they expect to live in the “best-protected city.” Why? Because if mutual confidence is destroyed, the foundations of the collective system will have been undermined. Justice is indivisible: it must be the same for all.

A few weeks ago, Mr. Winston Churchill in a speech in the House of Commons emphasised this point. He said:

“It is not a case of the encirclement of Germany, but of the encirclement of the potential aggressor. If we are the aggressors, let us be encircled and brought to reason by the pressure of other countries. If France is the aggressor, let her be restrained in the same way; and if it be Germany, let Germany take the measures meted out to her by countries who submit themselves to the law which they are prepared to take a share in enforcing.”<sup>1</sup>

If a European aggressor cannot be restrained in Abyssinia, how can he be prevented from running amok in Europe? If an injustice and a breach of the law could have been prevented in Africa, through a display of sanctionist solidarity and loyalty to the Covenant in October, how different might have been the course of events in Europe in March!

We are now faced with the possibility of the dis-

<sup>1</sup> Parliamentary Debates, House of Commons, Fifth Series, Vol. 310, Col. 1529.

solution or weakening of the League, and with it of the collective system which offers the only hope of preventing a war which will blast the very roots of Western civilisation.

A few years ago Japan dealt a heavy blow to the prestige and authority of the League. But on that occasion sanctions were not invoked. Article 16 was kept in cold storage. It still remained to be seen whether it could be applied, and if so whether it would succeed. Now it has been put to the test in a feeble and half-hearted way. If, as a result of this partial and inconclusive test, the Covenant is to be emasculated, and all sanctions are to be eliminated or weakened, then Europe will go back to 1914 with a new armaments race and military alliances as the order of the day. If it is the funeral of Abyssinia to-day, it may be the funeral of Europe to-morrow.

Conclu-  
sion.

The military and political repercussions of the Abyssinian *débâcle*, whether for good or evil, are bound to have a decisive effect upon the future of the League, and consequently upon the welfare and safety of every man, woman and child living in Europe. Many deductions, true and false, may be drawn from this tragic event; public opinion may be influenced one way or the other; but for those of us who, despite failures and setbacks, still believe in the rule of law and the progress of humanity, there can be only one conclusion. It is that the League must be so strengthened and developed that even its weakest member can, with confidence, appeal for its aid in the day of trouble and the hour of adversity.

## CHAPTER XI

### FEDERALISM

*“Having the protection of the Commonwealth, he needeth not the defence of private force.”—THOMAS HOBBS.*

THE problem of the modern world is the problem of federalism and the creation of federal institutions. The era of imperialism is past. In pursuit of this phantom, emperors, autocrats and sovereign nations have, during the course of centuries, squandered blood and treasure in fruitless attempts to achieve mastery, but it has always eluded their grasp.

Imperial-  
ism versus  
Federal-  
ism.

In the twentieth century of the Christian era domination has become a sheer impossibility. The reason is not far to seek. It is because during the last twenty-five years science has flung new and super-weapons into the world, the mutual employment of which, at any rate in Europe, precludes any nation, however great or powerful, from imposing hegemony upon its neighbours. In the next European war the sovereignties, armed with the most potent engines of destruction mankind has ever known, will assuredly obliterate each other. It follows that the choice lies, not between federalism and imperialism, but between federalism and barbarism.

Hitherto, war has been the most potent instrument in effecting changes in the relationships of States. It has always been a costly instrument, but it was not until our day and generation that it emerged as

Federal-  
ism a Sub-  
stitute  
for War.



“the potential destroyer of the human race.”<sup>1</sup> It follows that war, the system of international duelling, must be abolished as a human institution, and in order to abolish it it is imperative to discover a substitute which will enable changes to be brought about in the relationships of nations through a peaceful instead of a violent procedure.

This substitute is to be found in federalism, because the federal bond is formed, not by the imposition of the imperial will of one nation or state upon the other, but through the voluntary and free assent of all the co-operating states. Each nation demands to live its own life and to develop its national characteristics. Each nation insists upon the right of making its own special contribution towards the advancement of civilisation and humanity. Each boasts its own culture and the freedom to develop it in its own sphere. Consequently, the immediate problem is not how to suppress nationalism, but how to restrain it. The paramount task of international reformers and statesmen is to discover and create an international political organism in which the freedom of national development is assured, but which precludes the employment of violence against, and the infliction of injury upon, others. In other words, it involves the establishment of the rule of law.

Centuries ago Dante insisted that peace could only be established when his monarch—Justice—was firmly established upon the throne of Europe.<sup>2</sup>

<sup>1</sup> Winston S. Churchill, *The World Crisis: The Aftermath*, p. 452.

<sup>2</sup> See *The Problem*, pp. 173 *et seq.*; see further Dante, *De Monarchia*, I, v, trans. Church, pp. 186–188.

Consequently, in these days, when every nation demands equality of status, justice can only be secured through the evolution of federal institutions.

Hobbes<sup>1</sup> sailed his Leviathan over a sea of contracts, contracts entered into between individuals in their respective communities for the purpose of safeguarding their lives and possessions through the creation of a sovereign authority. The time has now arrived when these sovereignties must sign a new contract between themselves embodied in a federal constitution, in order to ensure that life on this planet does not once more become "solitary, poor, nasty, brutish and short."

In the seventeenth century, William Penn<sup>2</sup> proposed the Federation of Europe, and described the results as follows :

"The national sovereignties are as they were, for none of them have now any sovereignty over one another, and if this be called a lessening of their power, it must be only because the great fish can no longer eat up the little ones, and that each sovereignty is equally defended from injuries and disabled from committing them." <sup>3</sup>

Kant,<sup>4</sup> as we have seen, bids us choose between his "Empire of Right" and "the great graveyard of the human race." Federal evolution, in his view, is based upon the mechanism of nature, which means

<sup>1</sup> See *The Problem*, pp. 198 et seq.; see further Hobbes, *Leviathan*, Chap. XVIII.

<sup>2</sup> See *The Problem*, p. 77.

<sup>3</sup> William Penn, *An Essay towards the Present and Future Peace of Europe*, 1693, Chap. IX.

<sup>4</sup> See *The Problem*, pp. 91 et seq.

that if man resists it, he does so at his peril, because sooner or later it will become a vital necessity to his well-being and existence.

Rousseau,<sup>1</sup> the apostle of federalism, finds a solution of the European problem in this striking passage, which might have been written only yesterday :

“ But if those obstacles are such as I have described at the present moment—a moment when all the powers are entirely free to form separate leagues and offensive alliances—judge what they would become, if there were a general League, fully armed and ready at any moment to forestall those who should conceive the design of destroying or resisting it. That, in itself, is enough to show that such a Federation, so far from ending in mere vain discussions to be set at defiance with impunity, would on the contrary give birth to an effective power, capable of forcing any ambitious ruler to observe the terms of the general League which he has joined with others to set up.”<sup>2</sup>

No wonder that a century later Tennyson should have unfolded to us his vision of the Parliament of Man and the Federation of the World.

Federal-  
ism and  
Self-  
Deter-  
mination.

There have always been federalists since the days of the City States of Ancient Greece, whose experiments in this domain have throughout the centuries been an inspiration to their successors.<sup>3</sup> In Germany, Holland, Switzerland, the United States, Canada, Australia and South Africa, the principles of federal-

<sup>1</sup> See *The Problem*, pp. 89 et seq.

<sup>2</sup> J. J. Rousseau, *A Lasting Peace through the Federation of Europe*, Part I, trans. Vaughan, p. 58.

<sup>3</sup> See *The Problem*, pp. 60, 62, 64.

ism have been applied in different forms, but the most recent example is the confederation of States constituted at the conclusion of the most devastating and bloodiest war in history—the League of Nations.

The statesmen who assembled in Paris in 1919 endeavoured to harmonise two conflicting ideas, self-determination and mutual restraint. The right of self-determination so vigorously insisted upon at Versailles can only be expressed in rational terms if, when it is conceded, the national wills and policies—diverse and divergent in so many respects—are able to discover a common denominator which will attract their loyalty and secure their active support. In the words of Kant, “to all this diversity of individual wills there must come a uniting cause in order to produce a common will, which no distributive will is able to give.”<sup>1</sup> This common denominator is to be found in the administration of justice, which can only be realised through federal institutions. Otherwise each State becomes a complete law unto itself and, having armed itself to the teeth with the most destructive weapons the world has ever known, it becomes a standing menace, not only to the security, but also to the very existence, of its neighbours.

In the absence of any international restraint, the results of this anarchic system are bound to end in the complete overthrow of our common civilisation, and will eventually lead to the mutual extinction of the warring nationalities themselves—a fate which, no doubt, they may richly deserve, but which does

<sup>1</sup> Immanuel Kant, *Perpetual Peace*, trans. Smith, p. 164.

not contribute either to the welfare or the continued existence of each individual nation, or to the advancement of a civilisation of which they all so eagerly profess to be the leading exponents and protagonists. The statesmen who met at Versailles recognised this truth when they inaugurated the League of Nations. They proclaimed that the right of self-determination did not include the right of inflicting injury upon other peoples. This principle is valid even though the latter may only consist of a few million black men in the wilds of Africa.

Federal-  
ism and  
the  
Covenant.

Consequently the problem of the League is the problem of federalism. How far is it possible to secure the voluntary assent of a sufficient number of States to a system of co-operation for their mutual welfare, which must include a partial surrender of their individual sovereignties? Such a system involves at least two things: first, giving up the right of being the judge in one's own cause—in other words, willingness to submit all disputes to the adjudication of a third party—and, secondly, the substitution of co-operative for competitive armaments and the establishment of a mutual defensive and protective system. The Covenant represents the first attempt to apply these principles to Europe and, indeed, to the world. That it has so far failed to do so is due partly to the intransigence and folly of its members and the non-members who remain outside, and partly to the absence of those essential institutions through which the principles and practice of federalism can assert themselves.

Growth of  
Federal-  
ism.

We are told that the growth of the federal organism must necessarily be slow, and that even in the

face of necessity the pace cannot be accelerated;<sup>1</sup> that just as the reign of law has evolved very gradually in individual European communities, the same rate of gradualness must necessarily follow in the case of the European and to a still greater degree in the case of the world community. But, as we have seen,<sup>2</sup> if we inquire into the history of federalism we shall discover that this argument is a fallacious one. Initiated by wise and sagacious statesmen, supported by public opinion, reinforced by reason and logic, driven by stark necessity, the idea of federalism and the consolidation of the common weal has in the past in more than one instance made rapid strides. It has been an affair not of centuries, but of years. Confronted by the choice of the Empire of Right or the Great Graveyard, States and communities have leapt forward towards the consummation of a great and noble ideal, and in a relatively brief period have embraced federal institutions.

The outstanding case is the history of federal institutions in the United States—the most decisive and successful experiment in the domain of federalism to be found in the annals of mankind. Drawing its inspiration from the example of the City States of

Federal-  
ism in  
America.

<sup>1</sup> In his recently published book, *The League of Nations and the Rule of Law*, Sir Alfred Zimmern advances this view. It should be remembered, however, that the speed with which governmental changes are brought about depends largely upon the state of public opinion. In this connection the rapid development of the Soviet regime in the U.S.S.R. and of the Nazi autocracy in Germany provide striking illustrations. Moreover, it is reasonable to suggest that in the international sphere the pace will be accelerated by the driving force of necessity.

<sup>2</sup> See *ante*, Chap. II.

Ancient Greece,<sup>1</sup> modelled by practical and far-seeing statesmen, this experiment has stood the test of time. In the political and international firmament it is the guiding star of hope which points the way to peace and concord, to justice and the rule of law. We have seen that at the conclusion of the rebellion against Great Britain, thirteen sovereign and independent States formed themselves into a confederation whose constitution closely resembled the Covenant of the League of Nations. But after only seven years' experience, when, owing to the jealousies and diverse interests of the individual States, it became clear that the confederate constitution was crumbling to pieces, a vital decision had to be taken. The choice lay between complete independence and a federal authority equipped with the necessary institutions to secure respect for the public law. The controversy, as in Europe to-day, centred round the question of State sovereignty. The protagonists on both sides used the same arguments which are current in our discussions concerning the League.<sup>2</sup> The ex-

<sup>1</sup> Essay XVIII of *The Federalist*, which examines the inter-State leagues and confederacies of Ancient Greece, suggests that the early federalists in America were influenced by the example of the Ancient Greeks. For a brief survey of the Grecian Inter-State Leagues, see *The Problem*, Chap. II.

<sup>2</sup> See Nicholas Murray Butler, *Between Two Worlds*, 1934: "It may never have come to their [the people of the United States] attention, but not one single question which confronts the world to-day in trying to build our nations into an international society, not one, failed to be considered and discussed in principle by the fathers of this republic when they were trying to build a federal government for the thirteen States. Read Benjamin Franklin and George Washington and Alexander Hamilton and Thomas Jefferson and John Marshall; strike out the

ponents of federalism won the day, and the leaders, supported by public opinion, remodelled and revitalised their confederate constitution. Led by Hamilton and Madison<sup>1</sup> and other statesmen, they resolved to go forward and to develop, instead of to destroy, the embryonic confederate organism which had been born in the throes of war. On that occasion necessity pointed the way. Three wars were actually in progress and eleven disputes outstanding between the members of the confederation when the great decision was taken.<sup>2</sup> It was realised that thirteen sovereign and independent States meant confusion and anarchy, military alliances and everlasting bloodshed. On the other hand, a strong federal authority, equipped with a Congress to effect changes in the public law, a Supreme Court to interpret that law, and a common defensive force to uphold it, meant peace, progress and prosperity for all.

In the debates upon the new draft constitution of the United States, we find several proposals<sup>3</sup>

Federal-  
ism versus  
Regional  
Facts.

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words States and Colonies and put in the word nations and you have the statesmanlike, constructive, and forward-facing discussion of every great problem that faces the world to-day" (p. 26).

<sup>1</sup> The Introduction to *The Federalist* (Everyman edition, pp. 8 and 9) gives an account of the part played by Alexander Hamilton and James Madison in forging the Federal Constitution in America.

<sup>2</sup> For details of the bitter inter-State disputes which preceded the adoption of the Constitution in 1789, see J. Fiske, *The Critical Period in American History*, 1888, Chaps. III and IV.

<sup>3</sup> The danger of regionalism to the young American Confederacy may be gathered from the comments in *The Federalist*: "It may perhaps be thought superfluous to offer arguments to prove the utility of the UNION . . . but the fact is, that we already hear it whispered in the



designed to split up the thirteen States of the Confederation into groups, each group becoming an entity with a separate constitution of its own. Here is an idea similar to that embodied in the proposals for regional pacts and alliances within the framework of the League. In the confederate Congress composed of Government representatives from the thirteen States, a strong body of opinion apparently supported these proposals, and advanced the same arguments which are being put forward to-day for the division of Europe into regions and areas each of which would be responsible for concluding mutual arrangements to maintain the peace.

Fortunately these reactionary proposals, designed to rob the Confederation of its duties and responsibilities by transferring them to the shoulders of smaller, and consequently less powerful, associations of States were defeated.<sup>1</sup> Regional arrangements, it was felt, could only end in confusion and disaster. Dictated by selfish motives, described as vital interests, they only tended to divert attention from the centre of gravity, the supreme common interest of all—namely, the establishment of the rule of law—

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private circles of those who oppose the new Constitution, that the thirteen States are of too great extent for any general system, and that we must of necessity resort to separate confederacies of distinct portions of the whole" (*The Federalist*, No. I, Everyman edition, pp. 4–5).

<sup>1</sup> "The prohibition against treaties, alliances, and confederation makes a part of the existing articles of the Union; and for reasons which need no explanation is copied into the new Constitution" (*The Federalist*, Everyman edition, p. 226). The whole of Essay XLIV, of which this is the opening sentence, deals with the question of restrictions on the authority of the several States.

and only multiplied institutions common to all through which this rule could be universally applied.

For a century and a half the reformed confederation of the United States has, with one exception, given peace to the inhabitants of the original thirteen sovereign States of the Union, and since that day has enabled them to incorporate no less than thirty-two new States within the jurisdiction of the federal authority. The one exception was the devastating Civil War in 1864 lasting for a period of four years, which might have been avoided had the Federal Government been entrusted with a superiority of centralised force in comparison with the State Militias under the control of the individual State authorities.<sup>1</sup> As a result of this struggle, the federal constitution was strengthened and consolidated. President Lincoln asserted the principle of "one and indivisible," and since his day no serious attempt has been made to destroy the federal bond.

American  
Civil War.

Let us briefly contrast this result with the history of the South American continent. Here also we find a number of independent communities, the offspring of the Spanish and Portuguese Colonial Empires. When the bonds with Europe were severed, they formed themselves into sovereign States, each of which remained as an independent and isolated political unit.<sup>2</sup> Consequently South America has

The Case  
of South  
America.

<sup>1</sup> See Admiral F. E. Chadwick, *The Causes of the Civil War*, 1906; and Oscar Newfang, *The United States of the World*, 1930, p. 139, for an account of the military weakness of the Federal Government and its effect on the course of the Civil War.

<sup>2</sup> For a study of the reasons that led the Spanish Colonies in Central and South America to develop into separate national States instead of a federal union, see Norman Angell, *Preface to Peace*, 1935, pp. 111-113.

been the scene of countless wars and upheavals which have retarded its development and stunted the growth of its culture and civilisation. Had these communities, following the example of their North American neighbours, embraced and developed the ideas of federalism, had they formed themselves at the outset into a Confederation, how different might have been their history during the past century!

When the States of Europe assemble together to revise their Covenant, will they weaken it and emasculate its Articles by turning their footsteps in the direction of Latin America, or will they highly resolve to follow the trail which Hamilton and Madison blazed for thirteen sovereign communities a century and a half ago?

Con-  
federate  
Con-  
stitution  
and the  
Covenant.

What are some of the lessons and implications to be drawn from this, the most successful experiment in the history of federalism, which can be applied to its latest development represented by the Covenant of the League? It is clear that the federal problems in Europe to-day are fundamentally the same as those which confronted the American statesmen who drafted the new constitution in 1789. On the other hand, the conditions prevailing then and now may be very different, although there are many points of resemblance between them.

In the first place, the confederate constitution, as we have noted, was, in its essentials, on all fours with the Covenant of the League. It was a League of Governments, not of peoples, in the sense that the business of its legislature was transacted by nominees of the Governments of the thirteen States, not by

representatives directly elected by the peoples.<sup>1</sup> The delegates who attend the Assembly at Geneva are also appointed in the same way. Moreover, the resolutions passed at Philadelphia had afterwards to be ratified by the State Congresses, which involved interminable delays and evasions, especially in a country where in those days the means of transport and communication were of the most primitive description.<sup>2</sup> Despite the fact that these hindrances no longer exist, the same defect unfortunately manifests itself to-day at Geneva, because so many of the resolutions, pacts and conventions drafted and concluded there have never been ratified by the Governments of the States Members of the League.<sup>3</sup> We also find that there was no direct taxation in support of the American Confederate Government, and it was compelled to rely upon the contributions voted by the Governments of each State, which were not always forthcoming and, on some pretext or another, might be withheld.<sup>4</sup> This state of affairs

<sup>1</sup> "The moribund Congress of the Confederation, with its delegates chosen by the State assemblies, and casting its vote simply by States, had utterly failed to serve as a national legislature. . . . It was indeed because of this consciously felt diplomatic character that it was called a Congress and not a Parliament" (J. Fiske, *The Critical Period in American History*, p. 237). <sup>2</sup> *ibid.*, Chap. VII.

<sup>3</sup> See the lists published annually by the League Secretariat, which give in chronological order the international agreements which have been concluded under the auspices of the League. From these lists it is clear that in very many instances National Governments have failed to ratify, or even to sign, agreements concluded at Conferences and Assemblies in which their representatives have participated.

<sup>4</sup> "The most fundamental of all the attributes of sovereignty—the power of taxation—was not given to Congress" (J. Fiske, *The Critical Period of American History*, p. 98).

reminds us of the constant complaints—many of them unfounded—during the last eighteen years that members of the League have either defaulted or are in arrears with their subscriptions.<sup>1</sup> The inter-State policing arrangements in America, to provide for the security of the confederation and the maintenance of order, were also chaotic. There was no properly equipped and centralised defensive force, with the exception of a diminutive and obsolete navy, either to protect the infant confederation against attacks from outside, or to secure respect for the confederate laws and constitution. The confederate executive was therefore compelled to fall back upon whatever military contingents each of the

<sup>1</sup> In 1935, Mr. Hambro (Norway), acting Chairman of the Committee for the Settlement of Contributions in Arrears, made a statement to the Fourth Committee of the League Assembly in which he said: "The arrears on current contributions have now reached the following percentages: 1930, 13%; 1931, 14%; 1932, 20%; 1933, 27%; 1934, 28%. It is hoped that during the coming year that Committee (a new Committee which it was proposed should be set up to deal with arrears from 1933–1935 inclusive, the Committee of which Mr. Hambro was Chairman having been established to deal with arrears before 1932) would be able to arrive at a final solution for all the States, and that in future the question of contributions in arrears would no longer arise" (*League of Nations Official Journal*, 1935, Special Supplement No. 141, pp. 11–12).

See also the statement of the Fourth Committee of the Assembly of 1933, which "considers that the true figure of the total arrears due should be taken as being less than ten million francs. This amount is arrived at by the exclusion of consolidated arrears, which are payable over a number of years, and the arrears ascribed to the Argentine, the situation of which country is of a special character" (*League of Nations Official Journal*, 1933, Special Supplement No. 115, p. 92).

States might choose to despatch in an emergency.<sup>1</sup> It was left completely in the dark as to what the strength and equipment of these contingents might be. In short, it was at the mercy of chance, a circumstance which, as we have seen, does not conduce to the establishment of the rule of law.

In the case of the League, this state of affairs is reproduced in the provisions of Article 16, when in an international crisis each sovereign State may repudiate its bond and refuse to contribute its appropriate quota towards a joint force "to be used to protect the Covenants of the League."

Moreover, the jurisdiction of the Confederate Supreme Court of Justice was often ignored, and it possessed no effective means of making its writ run.<sup>2</sup> Broadly speaking, the same can be said of the Permanent Court of International Justice at The Hague. Lastly, confronted with all these obstacles, and powerless to deal with recalcitrant, defaulting and sometimes hostile State Governments, it became impossible for the confederate executive to carry out its responsibilities and obligations.

The Council of the League finds itself in a similar or even in a worse plight, because it is hampered by the rule of unanimity which prevents it from reaching rapid decisions and from becoming an effective executive organ of the international authority.

<sup>1</sup> For details regarding the inadequacy of the early American military procedure (it can hardly be called a system), see J. Fiske, *The Critical Period in American History*, p. 99.

<sup>2</sup> For a full discussion on the enforcement of the decrees of the Supreme Court of the United States in inter-State disputes, see *The Problem*, pp. 706 *et seq.*

In 1789, after an experiment of seven years, the paralysis at Philadelphia was complete. In 1936, after a similar experiment of eighteen years, the paralysis at Geneva is complete.

com-  
parison of  
American  
and  
European  
Con-  
ditions.

In the second place, the thirteen American States had all come into existence as a result of a successful rebellion against Great Britain. They had fought on the same side, and there was no distinction between victors and vanquished. There was no Treaty of Versailles. But if Great Britain, at the end of the War, had suggested a Federal Union with the thirteen States, there is no reason to suppose that such a proposal would have been rejected, especially when we remember that it was not until late in these unfortunate proceedings that the idea of complete separation was ever suggested.<sup>1</sup> It is probable that distance, lack of communication and physical obstacles played a much more decisive part in preventing such a solution than any other consideration. But these circumstances no longer apply to Europe in the twentieth century, when distance has been annihilated.

<sup>1</sup> "It is all-important to notice that it was not independence, but reconciliation, that the supporters of America desired; and it was all that the Americans themselves desired also. The idea of independence was not what inspired the Americans in their struggle, at least up to the actual outbreak of the war. Franklin told Chatham that he 'never heard from any person the least expression of a wish for separation.' Washington said that 'no such thing as independence is desired by the thinking man in America.' Jefferson declares that 'before 19th April, 1775, I never heard a whisper of a disposition to separate from Great Britain.' It was after the outbreak of the war that independence was thought of, and even then reconciliation was not completely abandoned" (R. Thomas, *Richard Price*, 1924, pp. 69-70).

However this may be, the history of federalism in South Africa demonstrates that mutual estrangement as the result of a war is not an insuperable obstacle to the achievement of federation. We recollect that within eight years the signatories of the Treaty of Vereeniging<sup>1</sup> co-operated to form the Union of South Africa, and afterwards stood shoulder to shoulder in the World War.

Thirdly, the vast majority of the inhabitants of the thirteen States were of British descent, with the traditions of the Mother Country behind them, and were firmly attached to liberal and democratic institutions. On the other hand, the peoples of Europe belong to diverse nationalities. This fact, however, did not prevent the consolidation of a federal regime in Switzerland, which embraced three distinct races within its constitution,<sup>2</sup> nor has it prevented hundreds of thousands of these same Europeans from migrating to the shores of the American continent, and becoming citizens of a great Federal Republic, which many of them during the World War defended against their German and Austrian kinsmen.<sup>3</sup> The distinctions of race and nationality are therefore not an absolute barrier to the consolidation of a confederate regime even in Europe.

Federal-  
ism versus  
Racial  
Distinc-  
tion.

It is true that democracy and liberal institutions have encountered serious setbacks in not a few European countries. This result is partly due to the

Federal-  
ism and  
De-  
mocracy.

<sup>1</sup> The Peace of Vereeniging was signed on 31st May, 1902, at the conclusion of the South African War, and the Union of South Africa was proclaimed on 31st May, 1910.

<sup>2</sup> For a further account of the working of the Swiss Confederation, see *The Problem*, p. 224.

<sup>3</sup> *Ibid.*, pp. 553-554.



failure of its States Members to develop the League into a real federal authority which would have been capable, through its institutions, of redressing their grievances, real or imaginary. But in the majority of cases democratic institutions are still functioning—Italy and Germany are the two great exceptions—and it may well be that the triumphant march of democracy during the last century has only been held up temporarily, and that the crop of dictators attributable to the World War is an ephemeral phenomenon. It is certain that in a reformed and federated Europe their departure from the scene would be hastened. This does not mean, however, that those nations who prefer a system of autocratic government should be excluded from the new confederation, provided they are prepared, in conjunction with their neighbours, to give the necessary guarantees for the loyal observance of its constitution.

Hence the need for effective guarantees to which all its members must subscribe, and which can only be found in the institutions of the federal authority.

Federal-  
ism and  
Language.

Fourthly, the American colonies spoke the same language and tolerated religious and racial differences. Europe is honeycombed with languages, and toleration is not practised in all her States. But the first essential is that they should tolerate each other, and this result can only be achieved by developing the principles of federalism. Obviously, it would simplify matters if there were a universal European language. This, however, does not appear to be an insuperable obstacle to the establishment of federal institutions, as the experience of Switzerland, Canada and South Africa clearly

proves, and the failures at Geneva cannot, by any stretch of imagination, be laid at the door of the interpreters, or to the necessity of conducting its proceedings in more than one language.

Fifthly, the American States were all youthful communities lacking traditions, especially the military tradition. The colonists had left a racketeering Europe, with its armies and navies and its professional soldiers, behind them. Moreover, there were no huge vested interests—armament firms, for instance—to batten upon the fears and suspicions, to arouse alarms and excursions amongst the inhabitants of the thirteen sovereign communities. There were no governing classes, and the politicians who held offices in the thirteen Governments had tasted the sweets of office only for the brief period of seven years.

Federal-  
ism and  
Tradition.

On the other hand, some European countries are to-day overrun by atavistic tendencies and obsolete traditions. Even the religions of heathendom are being revived, and the black shirt has become symbolical of the glories of Imperial Rome. Vested interests, especially the armament firms, prey upon the fearful apprehensions and the already denuded pockets of good and honest citizens in every European State. Notwithstanding the fact that this highly organised international industry will be the first to be blown into smithereens in the next war, its directors and shareholders, their eyes glued on the profits of the moment, are the foremost opponents of any federal development. The reason is obvious. No doubt they believe that a United States of Europe would kill competition in the armament market.

Federalism involves the pooling of military resources and the creation of a centralised international force under the control of the federal authority—in other words, one customer instead of many.

In Europe we are also confronted by the proud and venerable traditions of the fighting services, many of whose members stupidly and erroneously imagine that their livelihoods will be lost should they become part and parcel of an international policing system under a federal regime.

Then there are also the members of the governing fraternities, Ministers of State, no less than their advisers in the administrative services, who are naturally imbued with the importance of the responsibilities which have been placed upon their shoulders. With the long and honourable traditions of their offices and departments behind them, they cannot help looking askance at any new development in the domain of federalism which may deprive them of some at least of the powers they have hitherto wielded. Few Prime Ministers or Foreign Secretaries, for instance, will become enthusiastic at the prospect of being compelled to appear before a federal tribunal entrusted with the duty of composing the differences between two members of the authority which have defied settlement by conciliation and negotiation. Few First Lords of the Admiralty, War or Air Ministers will relish the establishment of an International Police or federal defensive force to which their departments may have to play second fiddle. It may well be that dictators will shudder at this prospect, and that nothing but dire necessity will compel

them to fall into the federal ranks. We may even find a natural reluctance amongst the democratic parliaments of Europe to share their sovereignties with a Federal Assembly, and to assist actively in the establishment of the new regime.

Fortunately for the inhabitants of the thirteen States, the politicians, administrators and State Congresses, in fact the whole paraphernalia of government, was relatively youthful, and consequently more receptive of new ideas.<sup>1</sup> In any case, they were the servants of democracies, and when public opinion had rallied to the doctrines so successfully preached by the reformers, they fell into line. Once the electors had been converted and had accepted the proposed changes and the partial transfer of sovereignty from the individual States to the Federal authority, the battle was won.

It will be seen, therefore, that in comparison with the America of 1789, Europe is severely handicapped in many respects in any attempt she may make to

Federal  
Reform in  
Europe.

<sup>1</sup> The youth of the American Confederacy need hardly be emphasised when it is contrasted with the state system of Europe, but the youthful readiness of the Governments of some of the States to take part in an experiment is shown clearly in the instructions that were given to the representatives who in 1787 were sent to discuss the possible reform of the Articles of Confederation. Those from New Hampshire were empowered "to discuss and decide upon the most effectual means to remedy the defects of our Federal Union, and to procure and secure the enlarged purposes it was intended to effect." Those from New Jersey were to take "into consideration the state of the Union and other important objects," and those from North Carolina were to "revise the Federal Constitution." The youthful freshness with which the States of the Union went about their experiment is demonstrated clearly in the chapter on American affairs, 1783-1789, in the *Cambridge Modern History*, 1904, Vol. VII.

reach the ultimate goal. It is hardly possible that in one stride she can emulate the American example by exchanging the confederate constitution embodied in the Covenant for a fully fledged and modernised federal establishment involving, amongst other things, the direct representation of the peoples concerned, federal elections, federal tax-collectors, sheriffs and other officials resident in all the co-operating and federated States. These reforms are probably for the future, when the federal consciousness has had an opportunity of further development.

In short, we do not suggest that the Covenant can be re-drafted so as to become a replica of the American constitution of 1789. European public opinion is not yet ripe for so drastic a change, and the reactionary elements are too strong. Nor may it be possible, at the outset, to include all the European States in a remodelled League. As we have already seen,<sup>1</sup> this orientation, though highly desirable, need not be regarded as essential to the success of the scheme. The federal principle is based upon equality of status and voluntary assent. These assents may not all come in simultaneously, any more than they did when the League made its first appearance at Versailles or when the American Federal Constitution was created in 1789.<sup>2</sup> The door should, however, be

<sup>1</sup> See *ante*, Chap. VIII.

<sup>2</sup> It should be noted that the federal system in America became a legal fact in 1787 as soon as nine of the thirteen states had ratified the new constitution. The remaining four States (New York, Virginia, North Carolina, and Rhode Island) joined the Union later, and by 1789, when the Federal Constitution was actually put into operation, all had ratified. The interesting point, however, is that non-ratification by four States did not prevent the formation of

left open: when the majority of the flock pass through the gap, the remainder usually follow.

How far, then, is Europe prepared to march along the federal road? How far is it necessary that she should go in order to reach comparative safety? In other words, what must she do to become the best-protected city? The answer to this speculation is that the new confederate authority must be capable of administering justice amongst its members and of protecting them against attacks from outside.

The  
Measure  
of Reform.

In order to fulfil these obligations, two things are imperative. First, there can be no weakening of the provisions of the Covenant, or of the responsibilities of its membership. The former must be strengthened and the latter clearly defined. Secondly, the League must be equipped with institutions through which the implications and intentions of the Covenant can be carried out most effectively. As we have seen, to assert the rule of law, two institutions at least are vital as part of the permanent machinery of the confederate authority, an Equity Tribunal and an International Police Force.<sup>1</sup> These represent the minimum requirements, if the League is to be developed into an

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the Union and that unanimous acceptance of the new constitution was not insisted upon by the people of the United States.

<sup>1</sup> For details as to the working of an Equity Tribunal, see *The Problem*, pp. 504-505, and other references under the heading "Permanent Court of International Justice." For details as to the organisation of an International Police Force, see *The Problem*, *passim*, especially Chaps. X and XII; and *Force*, Chaps. VI and XI.

authority capable of deterring nations from committing the crime of war and from plunging Europe into a welter of chaos and barbarism.

The creation of these institutions involves amendments to the Covenant, including the abolition of the rule of unanimity, which has never yet worked in any constitution.<sup>1</sup> It also involves drawing a dividing line between the responsibilities and obligations of what have already been described as the inner and outer circles of membership within the League. Obviously, this is a thorny problem, but there appears to be no valid reason why Europe, including Great Britain and the other members of the British Commonwealth, if they are prepared to join, should not form the nucleus of the new confederation.

Europe  
indi-  
visible.

Peace is one and indivisible. Europe and its offshoots should be one and indivisible now. United by a closer federal bond, they can become one and indivisible—"the inner circle." The world should be one and indivisible sometime. United by the Covenant bond, it will aspire to be one and indivisible—"the outer circle"—which means that the evolution of federalism in Europe cannot be held up indefinitely

<sup>1</sup> The country in which the principle of unanimity became one of the cardinal features of the constitution was, of course, Poland. There it was found to be a source of constant weakness, and finally, after it had sapped the State of all its authority, it was used by the statesmen of the surrounding Powers as a means for dividing Poland into three provinces (see *Cambridge Modern History*, 1904, Vol. VI, especially p. 192). For a study of the evils of the principle of unanimity in connection with the American Confederacy before 1788, and the League of Nations to-day, see Oscar Newfang, *The United States of the World*, pp. 45-48.

until the rest of the world falls into line. Europe's first duty is to put her own house in order and to set an example to other nations. As we cannot induce America to join the confederation she sponsored in 1919, we are compelled by necessity—the range of the bomber—to emulate the example she set in 1789, and to strengthen the confederate bond which now unites the European members of the League. We shall welcome America back into “the outer circle”: we shall rejoice if she enters “the inner circle.”

But in the meantime let us attempt to develop the federal conception in Europe. This means that no regional pacts or alliances can be tolerated in this continent, and that European States must choose between membership or non-membership of the confederate authority. How many of these States are prepared to combine together to uphold the rule of law? That is the practical and immediate question. If there is a majority, represented not merely by numbers, but by a preponderating superiority of force and resources, will they be prepared to advance along the federal highway, or will they timidly retreat with the minority?

There are two reasons why they should advance. The first is that in comparison with the physical conditions existing in America in 1789—the undeveloped state of the country, the difficulties of communication, transport, and the mobilisation of public opinion—Europe to-day possesses a tremendous advantage. Not all the discoveries and inventions of modern science have been enlisted exclusively on the side of the devil. Steam, electricity, petrol, wireless, even the aeroplane, can also be employed

Physical  
Unity.



on the side of the angels, if appropriate human institutions are created for that purpose. Millions of people throughout Europe, and indeed the world, can be reached through broadcast speeches and debates. Events in the remotest corner of the globe can be chronicled in the twinkling of an eye. The world has shrunk, Europe has shrunk, and in all countries where personal liberty and freedom of speech have not been suppressed, public opinion can be educated and mobilised in support of the rule of law. Representatives of the different communities can travel at a speed undreamt of by the Congressmen and Senators of 1789, many of whom could only reach Philadelphia after a month or six weeks of incessant and arduous travel.<sup>1</sup> Undeterred, however, by these difficulties, they accomplished their task. Has it now become so easy that the statesmen and politicians of Europe are unwilling to tackle it?

America's  
Necessity.

Secondly, the trump card of the reformers in America was necessity. As we have seen, three wars were actually in progress and eleven disputes outstanding between the thirteen States when their representatives met to discuss the draft of the new constitution. What was to be done? Clearly it is a mistake to imagine that these sovereign communities lived together in a state of perfect amity and friendship.<sup>2</sup> On the contrary, they were rapidly

<sup>1</sup> J. Fiske, *The Critical Period of American History*, 1888, pp. 60-61.

<sup>2</sup> "To the west of the thirteen States stretched limitless lands into which settlers were now pushing in ever-increasing numbers. Each of the States had indefinable claims to expansion westward. It was evident to every clear-sighted man that the jostling of these claims must lead in the long run to war, unless the central Government

drifting into a series of internecine wars and feuds, the end of which no man could discern. Their interests were often conflicting; their boundary disputes and state jealousies abnormal. These were the real conditions which Hamilton and Madison and their friends had to face, and no doubt it appeared to many of their contemporaries that their plan of welding these hostile and warring communities into a federal state was visionary and Utopian.

The political condition of America in 1789 is, broadly speaking, reflected in the condition of Europe to-day. It is true that in the latter there are no wars actually in progress, but preparations for war are proceeding apace. No doubt there are many disputes outstanding, and unfortunately no appropriate institutions exist for their settlement. Necessity stares Europe in the face to-day as it did the American States one hundred and fifty years ago.

Europe's  
Necessity.

Europe's necessity, however, is immeasurably greater. With her congested populations, her dependence upon huge industries—as compared with agriculture—her enormous cities and vulnerable nerve-centres, with bombs and aeroplanes, poison gas and all the other devilish paraphernalia of war overshadowing her, she runs risks a thousand times greater than the primitive and widely scattered colonial settlements did in 1789. Modern civilisation, at any rate in Europe, is a delicate and

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could take on their apportionment. The feebleness of the central Government, its lack of concentration, became . . . an inconvenience” (H. G. Wells, *The Outline of History*, 1920, Vol. II, p. 588).

highly complex organism which can easily be dislocated, if not completely destroyed. Therefore, Europe is driven by necessity to assert the rule of law within her borders, and she can do so only by developing the federal principles and institutions embodied in the Covenant of the League. Why should her statesmen and peoples pause in the fulfilment of this beneficent task? Why should they squander millions on re-armament,<sup>1</sup> when the solution of their troubles and anxieties is to be found in the development and strengthening of the federal bond? Why do they propose to return to the habits of the cave-man by burrowing like rabbits in a vain and futile attempt to escape the projectiles which, sooner or later, will rain down upon them from the skies? <sup>2</sup>

Federalism: The Need for Research.

Some of the best brains in every country are busily engaged either in devising new processes of wholesale slaughter or the means of countering those which have already been invented. One set of brains is endeavouring to cancel out the results produced by the other.<sup>3</sup> That, in itself, is a species

<sup>1</sup> For details concerning armaments expenditure, see Paul Einzig, *The Economics of Rearmament*, 1934, pp. 178-179; and John Gunther, *Inside Europe*, 1936, pp. 134-137.

<sup>2</sup> " 'Defence against air attack,' says General Goering in his work (*Handbook on Air Defence*, 1934), 'has become a question of life and death for our people,' and he regrets that 'every German his gas mask' is not possible on account of the expense. It is urged that every house should have gas- and bomb-proof cellars, and there are pictures showing how to behave in bomb-proof shelters and if caught in a gas cloud " (Lt.-Col. Norman G. Thwaites, *The Menace of Aerial Gas Bombardment*, published by the New Commonwealth Society, 1934).

<sup>3</sup> " Thus in the same building two groups of men sit side by side, each endeavouring to stultify the work of the

of insanity. But how many committees or commissions have been appointed in any country to investigate the possibility of a federated Europe? Where are the economic experts and military technicians? Where are the learned pundits and legal luminaries, the scientists and industrialists? Why has no Government mobilised the brains, the learning and goodwill of its citizens, in an attempt to work out a practical solution of the federal problem and to educate public opinion in its support? Elaborate and probably quite futile schemes are prepared to instruct the public in the use of gas masks and the construction of bomb-proof shelters. As there are many varieties of poison gas,<sup>1</sup> the odds are that the masks will be useless. Incendiary bombs dropped by the thousand will be a severe tax upon the efficiency of our fire brigades.<sup>2</sup> High-explosive shells will con-

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other, whilst the taxpayer who pays the bill looks on complacently. A new type of tank may be produced impervious to the missiles of the defence. Immediately the gunner and the shell expert collaborate to put the offspring of their engineering colleagues out of action. Here is an internal or domestic duel, a competition within a competition, which has no finality and calls for increasing subsidies year after year" (*The Problem*, pp. 276-277).

<sup>1</sup> Several kinds of poison gas were in use during the Great War, among them chlorine, chloropicrin, phosgene, tear gas, toxic smoke, and mustard gas. Since the War several new gases have been discovered by the chemists of America, France, Germany, and other countries. A system has also been devised whereby dried clay which has been impregnated with poison gas can be sprayed from the air in the form of powder. (For further details, see the pamphlet *Poison Gas*, published by the Union of Democratic Control; and L. E. O. Charlton, *War from the Air*, 1935, pp. 168-169.)

<sup>2</sup> "The worst effects of all, however, will undoubtedly be brought about by the latest forms of incendiarism. . . .

tribute to the general pandemonium. No one has yet explained how the resulting panic amongst the civilian population is to be arrested and allayed.

Obviously, prevention is better than cure. Therefore, why are no effective steps being taken to deal with the root cause of the mischief—the absence of any rule of law? Has it never entered the head of any Prime Minister or Foreign Secretary that intensive research and investigation by the best brains in the country should be undertaken into the development of federalism and its institutions, especially in their application to Europe? There are committees galore composed of distinguished persons dealing with poison gas, high-explosives, aircraft and all the other preparations for war,<sup>1</sup> but not a single committee has yet been appointed to consider the organisation of peace. This task, apparently, is relegated

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The thermite bomb, weighing four pounds or less, can be scattered over the city at large. Fire points will be raised in all directions, quite beyond the control of any fire-fighting system, and with favourable weather conditions a conflagration might start as great as the Fire of London. . . . Thermite will burn through steel, and through the successive floors of buildings, so that modern architectural construction, only fire-proof in the ordinary sense of the word, will be no adequate protection against it . . . it cannot be quenched with water" (L. E. O. Charlton, *op. cit.*, pp. 171–172).

<sup>1</sup> For example, the Committee of Imperial Defence, which is described as follows in the *Armaments Year Book* for 1935: "The Committee of Imperial Defence is an advisory and consultative body concerned with the co-ordination of defence policy and matters related thereto. The Prime Minister is Chairman of the Committee, and summons other ministers, officials, and expert advisers, having regard to the nature of the subjects discussed" (*Armaments Year Book*, issued by the League of Nations, 1935, pp. 115–116).

exclusively to overworked Ministers and their departments, to ubiquitous and harassed politicians, and possibly to a handful of amateurs who are usually regarded as cranks and visionaries.

Let us take, for instance, the two institutions suggested above—an Equity Tribunal and an International Police Force. In all probability the creation of these institutions as part of the mechanism of the League would rescue Europe from the horrors of another war. Then why have the members of the International Law Association<sup>1</sup> and other kindred bodies not been consulted by the Government, and invited to work out the implications of equity as applied to the federal system? This is a task which the members of these Societies should revel in, and if they come to the conclusion that such a system is impracticable, can they suggest an alternative and more satisfactory procedure for effecting peaceful changes in the relationship of states? Can they elaborate and improve upon the existing confederate constitution of the League? The investigations of the Medical Research Council and similar bodies are subsidised by Government grants: then why not other bodies engaged in endeavouring to solve a problem which, in its vital importance and significance, far surpasses all the rest?

The same procedure should be applied to the organisation of sanctions. Have the Associations

<sup>1</sup> The International Law Association was formed in 1873 by legal experts interested in the development of international law. Its primary object was to codify international law, since it was thought that the lack of a proper code was the chief obstacle to the substitution of arbitration for war. For further details, see the 38th Report of the International Law Association, 1934.

of Bankers, for example, been invited to submit a plan for the imposition of financial restrictions upon the aggressor? Have the Chambers of Commerce and Trade Associations been requested to confer with distinguished economists in order to draft effective schemes for the organisation of economic and mineral sanctions, boycotts and embargoes, as weapons in the federal armoury which can only be used to assert the rule of law?

Lastly, have the military, naval and air experts been instructed to prepare a scheme envisaging the employment of a joint force to be used exclusively as a policing instrument under the control of the federal authority, to which each State Member will make its appropriate contribution?

We have seen<sup>1</sup> that the Commission created under Article 9 of the Covenant was never called upon to function during the recent Italo-Abyssinian conflict. Apparently its existence had been entirely overlooked or forgotten. But had each State Member appointed its own advisory committee to report upon the fulfilment of its military obligations under Article 16 the results of these investigations could have been co-ordinated by this Commission at Geneva.

Necessity demands the consummation of a federated Europe. It can only be achieved along these lines. We have been told on high authority that these avenues have not yet been explored.<sup>2</sup> Then

<sup>1</sup> See *ante*, Chap. VII.

<sup>2</sup> Mr. Baldwin exemplified the complete failure to devise any practical scheme for the co-ordination of the forces of loyal States Members of the League when, speaking in the House of Commons on 18th June, he said, "It is most important to realise that military preponderance does not

why not let the exploration begin? They constitute the approaches to a new and reformed League. The results of these researches will enable the League to be developed upon sound and scientific lines, dictated by the experience derived from the World War, and permit the application of its lessons—unity of command, economic and financial collaboration and co-ordination—to the organisation of peace.

The alternative is to drift, to improvise and to be at the mercy of every crisis, without any preconceived policy or carefully worked out plan, bereft of any system or institutions through which this policy and plan can effectively function. We are therefore driven once more to the conclusion that the problem of the League is the problem of federalism.

Con-  
clusion.

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necessarily depend on the mere numbers available theoretically. . . . They [the forces of the aggressor] may well be stronger than much larger forces that belong to different nations which speak different languages, which have no unity of command, which have never been trained to act together under one leader, and which may be separated from each other by great distances.” (Commons Debates Fifth Series, Vol. 313, Col. 1235.)



## CHAPTER XII

### THE REFORM OF THE LEAGUE

*"The Belial, with words clothed in reason's garb,  
Counselled ignoble ease and peaceful sloth,  
Not peace."*—MILTON.

*"Learn or perish."*—VISCOUNT GREY.

Over-  
hauling  
the  
Machine.

WE are told that the League must be reformed. How is it to be reformed? Is it to advance or recede; to be pruned or expanded; to be emasculated or vitalised? These are the urgent and paramount questions. It is true that after an experience of eighteen years it is necessary to overhaul its machinery, to tighten up the bolts, to replace defective parts and to supply new ones where they are urgently required. Above all, it is vital that there should be an adequate supply of motive-power without which the machine, however perfect or imperfect it may be, will come to a standstill.<sup>1</sup> Let us also satisfy ourselves that the fuel or motive-power is derived from unadulterated sources and that it is supplied under a reliable guarantee. We are told by some people that because the machine came to grief on the Sino-Japanese and Italo-Abyssinian roads, it must therefore be scrapped. Why did it come to a standstill? Because a vast amount of water had found its way into the petrol tank, and no plant existed to test the quality of the

<sup>1</sup> See the interesting article by Professor H. A. Smith on "The Real Weakness of the League" in *The Nineteenth Century and After*, January, 1936, especially pp. 20 *et seq.*

petrol, and no attempt was made to ensure that the guarantees of its quality were forthcoming.

As we have seen, the defects in the League were due partly to the absence of those essential institutions through which the common will could assert itself. We have already dealt with this aspect, the two essential institutions being an Equity Tribunal and an International Police Force.

Causes of  
Failure.

But the inability of the League to pursue a consistent and successful course in the Italo-Abyssinian conflict was mainly due to the lack of determination and cohesion on the part of its States Members.

The immediate cause was the attitude of France, especially her refusal to co-operate in imposing the oil sanction<sup>1</sup> and in initiating the Hoare-Laval proposals<sup>2</sup> which, at a critical moment, completely

<sup>1</sup> See *ante*, Chap. VII, p. 80.

<sup>2</sup> It will be remembered that the French and British Foreign Secretaries—acting upon a suggestion thrown out by M. van Zeeland at a meeting of the Co-Ordination Committee upon which, however, the Committee as a whole refrained from expressing any opinion—endeavoured to negotiate a settlement of the Italo-Abyssinian conflict. The results of their efforts in this direction were represented by the notorious Hoare-Laval proposals adumbrated in December 1935. The proposals may be briefly summarised as follows:

- (1) Extensive territorial gains by Italy in the Tigre, Danakil and other provinces, the projected Abyssinian outlet to the sea being placed strategically at the mercy of Italy;
- (2) Extensive Italian economic expansion in Southern Ethiopia, and control of the Ethiopian Administration in this zone, in accordance with a scheme drawn up by the League.

The proposals were speedily abandoned, after a remarkable and spontaneous demonstration of loyalty to the principles of the League Covenant in Great Britain, as a result of which Sir Samuel Hoare was superseded by Mr. Eden at the Foreign Office.

undermined the moral authority of the League. The French attitude was the result of an understanding concluded between Laval and Mussolini<sup>1</sup> which, in turn, had been brought about by the determined opposition of Great Britain to the organisation of sanctions at the Disarmament Conference.<sup>2</sup> What, in effect, appeared to be her repudiation of Article 16 reacted on the policy of France, and compelled her to seek compensations elsewhere, both in Italy and Russia.<sup>3</sup> Had the guarantee of an International

<sup>1</sup> Although M. Laval has flatly denied the existence of any agreement with Mussolini by which France had guaranteed to give Italy a free hand in Abyssinia (*The Times*, 20th June, 1935), it seems certain that some kind of understanding must have been reached on this point between the two States during the conversations which M. Laval had with Mussolini in Rome in January 1935 (*The Times*, 15th May, 1935).

<sup>2</sup> On 5th February, 1932, the French representative at the Disarmament Conference presented his Government's proposals. "The main object of France in 1932, as in 1919 and in subsequent years, was still the organisation of a system of security" (Toynbee, *Survey of International Affairs*, 1932, p. 197). "It was obviously not likely to commend itself to Powers such as the United States of America and the British Empire, which had consistently set their faces in previous discussions of the question of disarmament and security against any extension of the system of sanctions. . . . The plan was coldly received in the Press both of Great Britain and of the United States, and Sir John Simon only referred to it in passing when he opened the discussion in the Plenary Session of the Conference on 8th February" (*ibid.*, p. 200). For further information on the action of Great Britain in the Disarmament Conference, see *ibid.*, p. 223, 1932.

<sup>3</sup> Another consideration which compelled France to seek the security of defensive alliances was the success of the National Socialist revolution in Germany. This led to "the gradual stiffening of the French attitude at the Disarmament Conference," and "the following-out of measures intended to improve French relations with Italy and Russia."

"The Franco-Russian Pact of Non-Aggression, which had

Police Force, supported by contributions from all the members of the League, been in existence, it is reasonable to suppose that none of these things would have happened. Moreover, in existing circumstances effective action or intervention on the part of the League is at the mercy of domestic events and fluctuations of public opinion, especially in Paris and in London. For example, a Press campaign lavishly financed by the aggressor,<sup>1</sup> or induced on his behalf by some other consideration,<sup>2</sup> may, at the critical moment, produce decisive results. It does not follow, however, that these results represent the considered opinion of the electorate. On the contrary, when the testing time comes they may be repudiated by public opinion, just as M. Laval's policy was repudiated by

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been initiated on 29th August, 1931, and signed on 29th November, 1932, was unanimously approved on 18th May, 1933, by the French Chamber of Deputies," and was followed by visits of Litvinov to France, and of Herriot and a French Air Squadron to Russia.

"As for Franco-Italian relations, the French desire for greater cordiality was signified in the special mission of M. de Jouvenel, as French Ambassador, to the Quirinel from 25th January, to 17th July, 1933." During the early part of September a satisfactory exchange of views on disarmament went on between Paris and Rome. Finally, in January 1935, Laval visited Mussolini and signed the Franco-Italian agreement (Toynbee, *Survey of International Affairs*, 1933, pp. 161-162 and p. 295; and *The Times*, 8th January, 1935).

<sup>1</sup> Cf. John Gunther, *Inside Europe*, London, 1936, p. 143.

<sup>2</sup> During the Italo-Abyssinian dispute certain sections of the British Press were hostile to collective security. In particular the Rothermere-Beaverbrook popular dailies opposed any active support by Great Britain of sanctions, on account of their isolationist policy. (For further comments on the Rothermere-Beaverbrook Press, see Norman Angell, *Preface to Peace*, 1935, p. 147.)

his fellow-countrymen at the recent elections.<sup>1</sup> Obviously a press subsidised or influenced by the propaganda department of the aggressor cannot be regarded as a reliable index to public opinion in any country.

The Time  
Factor.

Moreover, the time factor enters into these calculations. Domestic events which may have a decisive bearing upon the policy and actions of the League unfortunately do not always synchronise. For example, the British elections came in time, but the French elections came too late, with the result that Mr. Eden supported the oil sanction, whilst M. Laval opposed it. On the other hand, it is reasonable to assume that M. Blum, had he been elected a few months earlier, would have supported it. Consequently, at the moment when Great Britain emerged in a new rôle as the protagonist of sanctions, and Mr. Eden, instead of Sir John Simon, represented her at Geneva, his opposite number at the Quai d'Orsay, M. Laval, had reversed the traditional French policy of sanctions which could not be resumed until the elections were over, and M. Blum had assumed the Premiership. In the meantime, the sanctionist front had collapsed. In these circumstances it is obvious that neither the people of France nor of Great Britain have repudiated the

<sup>1</sup> "It would be useless to contest the success obtained, at the polls and in the elections in general, by the Parties of the extreme Left. This success is striking, and 'Humanité' as well as the Popular Front to-day has the right to shout victory. The Communist Party will have 73 representatives in the next Chamber instead of 9; the Socialist Party 146 instead of 92 . . . the Communist Party has simply registered 'its share of success.' This is indeed the lion's share" (*Le Temps*, 5th May, 1936).

system of collective security, or have given a mandate to their respective Governments for the elimination of Article 16 from the Covenant.<sup>1</sup> On the contrary, they have supported the underlying principles of both. The peoples of France and Great Britain have endorsed the Covenant in its entirety.

But how, it may be asked, under these conditions, is the League to maintain the principle of continuity of policy? How will it ever be able to assert consistently the principles and provisions of the Covenant? Only through the establishment of those vital institutions through which the combined will can function automatically and successfully.

Continuity  
of League  
Policy.

The creation of these institutions is the practical expression of the combined will. It is the only conclusive test, because it does not deal with a single

<sup>1</sup> See the declarations made at the General Election in Great Britain in the autumn of 1935, and likewise in France. In a broadcast speech on 25th October, 1935, Mr. Baldwin said, "If sanctions of the severest kind are imposed, they lead inevitably to blockade, and blockade brings in the question of the countries outside the League. . . . I would never sanction this country going into blockade unless I was sure beforehand of the attitude of the U.S.A. . . . Whatever may happen in the future with regard to blockade, the brunt of any trouble which may result will fall in the beginning on the British Navy in conjunction with others, if we are fortunate enough, possibly alone if we are not . . . I am all in favour, and the Government are all in favour, for they see no other course, of adopting as the policy of this country, as far as the League can carry it out to-day, the policy of collective security" (*The Times*, 26th October, 1935).

On 28th December, M. Blum stated, "Peace is indivisible because it rests on the equal rights of the nations, on the substitution of law for force in the settling of international disputes, on the solidarity of the nations among themselves, on general disarmament and mutual control" (*Le Temps*, 29th December, 1935).

dispute or international event arousing the passions or affecting the immediate self-interests of nations, but is designed to strengthen and consolidate a system—the rule of law. Can the individual national wills represented by the Governments at Geneva ever be synchronised into a combined will which will create a peaceful procedure for the settlement of all disputes and a single instrument for upholding the public law? The day that happens the future of the League will be assured, and the most far-reaching step in the annals of mankind will have been taken for the prevention of war.

In existing circumstances this step is not an impossibility, it is purely a matter of chance. In the long run it is a certainty, unless, in the meantime, the members of the League are blown to smithereens in another European War. When will the pendulums swing in the same direction at the same moment? Therefore, it is not a question of the powers of the League; it is a game of hazard. At any time during the last eighteen years this step might have been taken at Geneva. It was within the powers of the League; it is still within its powers, because it involves implementing the existing provisions of the Covenant and the Kellogg Pact—in other words, clothing them with flesh and blood, in the form of institutions. There were occasions during this period when, had Great Britain taken the lead in proposing this course, it would have been followed. Such an occasion was the 1924 Assembly, which registered the high-water mark of League solidarity when, for a brief period, the national wills of France and Great Britain synchronised in the Protocol for the Pacific

Settlement of International Disputes. But a few weeks later, after an election in Great Britain, fought entirely on other issues, a Conservative Government came into power. The result was that the Protocol, which had been fathered by a Labour administration, was killed. Subsequently, Sir Austen Chamberlain, having succeeded Mr. Arthur Henderson at Geneva, launched his Regional Pact of Locarno as a substitute.

Now, as then, a section of the Conservative Party—wittingly, or unwittingly—propose to commit an act of sabotage directed against the League, despite the fact that the results of their former efforts are painfully apparent in the condition of Europe to-day.

How do they propose to reform the League? What are the suggested remedies? Are they designed to strengthen the League, or to weaken it? Here is one:

Remedies:  
"The  
Courage-  
ous Act."

"The nations who compose the League should review the situation and should decide so to limit the functions of the League in future that they may accord with its real powers. If that policy were to be . . . courageously carried out, I believe that it might go far to restore the prestige of the League and the moral influence which it ought to exert in the world. But if the League be limited in that sort of way it must be admitted that it could no longer be relied upon by itself to secure the peace of the world."<sup>1</sup>

It appears that we are now exhorted by Mr. Neville Chamberlain to act courageously. How? By de-

<sup>1</sup> The Rt. Hon. Neville Chamberlain in a speech at the 1900 Club (*Daily Telegraph*, 11th June, 1936).



veloping the organism of the League? On the contrary, he tells us that in order to restore its prestige and moral influence, we must limit its functions in future. Surely this is sounding the retreat with a vengeance. But Mr. Chamberlain admits that, if this is done, we can no longer regard the League as an effective instrument to maintain the peace. In effect, we are told that we must act courageously by depriving the League of those functions which may enable it to secure the peace of the world.

What does this courageous act amount to? It involves the abandonment of the conception of the League as an international authority. It means that we throw overboard our duties and responsibilities as a State Member by transferring them, if possible, to the shoulders of someone else. Such a course may be dictated by expediency, but it can hardly be described as courageous. It means a return to the shilly-shallying, dilly-dallying policy pursued by successive British Governments until last autumn. We may well ask why it was that on that occasion there was a complete reversal of our previous policy. In this connection three events are worth noting:

- (1) Over ten million people had voted in the Peace Ballot in favour of economic sanctions and nearly seven million in favour of military sanctions—the collective system;
- (2) Mussolini had begun to brandish his big stick in East Africa, where British interests were involved; and
- (3) a General Election was impending.

To sum up, the policy of Great Britain until last autumn was *the Covenant, minus Article 16*. From September till May it was *the League in its entirety*. But apparently in June the new slogan is “*A League with Limited functions*.”

We are tempted to ask what precisely the Chancellor meant when he alluded to the “real powers” of the League. If they are the powers contained in the Covenant, then, as we have seen,<sup>1</sup> they have never been tested, because only two out of the five sanctions enumerated in Article 16 were put into operation, and one of these only partially. Therefore, it is untrue to say that the policy of collective security “has been tried out and has failed to prevent war, failed to stop war, failed to save the victim of the aggression.”<sup>2</sup> That policy was only tried out in a half-hearted and irresolute fashion. Why? Because, first, Great Britain at the Disarmament Conference, and, secondly, France in Abyssinia had refused to honour their obligations. Clearly this result was not due to any lack of powers entrusted by its members to the League, but to unwillingness on the part of at least one of its most influential members to employ them. Obviously, it is unfair to damn the League and the collective system because one of its members has, on one occasion, run away from its responsibilities. If by “powers” is meant the collective powers of its States Members, it is clear that their combined and potential powers—in other words, their military,

Powers  
of the  
League.

<sup>1</sup> See *ante*, Chap. III.

<sup>2</sup> The Rt. Hon. Neville Chamberlain in a speech at the 1900 Club (*Daily Telegraph*, 11th June, 1936).

economic and financial resources—were ample to ensure the success of the League, had they been willing to use them collectively to deter the aggressor, or to bring the Abyssinian war to a speedy conclusion. Consequently it is idle to suggest that in the recent Italo-Abyssinian conflict we have tried “to impose upon the League a task which it was beyond its powers to fulfil.”<sup>1</sup>

Emascula-  
tion of  
Covenant.

Clearly, the paramount lesson to be learnt from this unfortunate business is the necessity of organising these resources in advance of the crisis, and to make it as difficult as is humanly possible for any nation to repudiate its engagements. But the remedy proposed by the Chancellor of the Exchequer can only mean that any future development of the League is to be arrested. It is to be emasculated by the elimination of Article 16, and the policy of collective security endorsed by the British electorate is to be scrapped by its Government after a trial period of less than nine months. The League is once more to become a mere talking-shop and Geneva the scene of diplomacy by conference, an enlarged and new edition of Castlereagh's conference system, inaugurated at the beginning of last century.<sup>2</sup> Shades of Palmerston, Gladstone, Disraeli and Joseph Chamberlain! Has Great Britain renounced her claims to leadership in the Councils of Europe? Are we to assume that the isolationist policy dictated by Lords Rothermere and Beaverbrook

<sup>1</sup> The Rt. Hon. Neville Chamberlain in a speech at the 1900 Club (*Daily Telegraph*, 11th June, 1936).

<sup>2</sup> For further details of Castlereagh's conference system, see C. K. Webster, *The League of Nations in Theory and Practice*, 1933, pp. 15-16.

has now been accepted as the policy of the Cabinet, and that the rank and file of the Conservative Party who supported sanctions at the last election are in full retreat. Are we to bow the knee to Mussolini to-day, in order to shake hands with Hitler to-morrow? The slogan in September was "Up with the League"; in May it is "Down with the Covenant." Staff Conferences in March<sup>1</sup> are followed by the scrapping of Article 16 in June. Confusion worse confounded! Why? Because, like a rudderless ship, we have altered our course so often that no one knows where we are bound for.

What is the second remedy which is proposed for the reform of the League? According to the Chancellor of the Exchequer, "It might be wise to find a more practical method of securing peace by means of regional arrangements which would be guaranteed only by those nations whose interests were vitally connected with those danger-spots."<sup>2</sup>

Regional  
Pacts.

This proposal means, in effect, the splitting up of Europe into regions or zones, each of which will make its own arrangements for the maintenance of peace, with or without the economic and financial support of the other members of the League. As we have seen,<sup>3</sup> it resembles the plans for the division of the thirteen American States into regional groups, widely discussed after the Convention in 1787, which were fortunately defeated by Hamilton and Madison and their supporters. Europe to-day is faced with the same problem.

<sup>1</sup> See *ante*, p. 79, Note 1.

<sup>2</sup> *Daily Telegraph*, 11th June, 1936.

<sup>3</sup> See *ante*, Chap. XI.

Treaties of mutual assistance within the framework of the League is the euphemistic description given to these proposed arrangements. What do they amount to? Little more than military alliances, directed against one or more of the States in a particular zone. They are designed merely as another face-saving device to absolve the Great Powers, especially Great Britain, from their commitments and responsibilities under Article 16, which had always been the avowed aim of the Foreign Office until last autumn. Locarno, substituted for the 1924 Protocol, was the first blow. It helped to undermine the prestige and authority of the League. The "general post" meetings of the Locarno Powers and the League Council in London a few months ago demonstrated the absurdity of two groups of States, whose composition was practically the same, each trying to deal with one problem.<sup>1</sup>

<sup>1</sup> The reports in *The Times* give a clear idea of the alternation between the old diplomatic methods of conversations between allies and the new method of submitting a dispute to an internationally representative body.

On 9th March, *The Times* reported "Germany Repudiates Locarno—Armed Forces in Demilitarised Zone," and added that France had appealed to the League Council. On 10th March appeared the news that the Secretary General of the League had informed Germany of the French request for a Council meeting, and invited Germany to send a representative. In the same edition, however, was the news that the Locarno Powers, excluding Germany, had met in Paris. On 11th March, came the news that "The next meeting of the Locarno Powers is to be in London, and . . . the League Council will meet there immediately also." On 13th March it was reported that "The meeting of the Locarno Powers . . . yesterday condemned the German breach of the Locarno and Versailles Treaties, and decided that further consideration should be referred to the League Council." But the Locarno Powers

What useful purpose is served by these attempts to compress the rule of law into water-tight compartments? Why not concentrate on the League, and make it function properly? Then it may be able to report progress. But to deprive its members of their existing obligations is to dissipate the powers of the League, which, according to the Chancellor of the Exchequer, are at present insufficient for its task. Obviously to transfer the responsibilities voluntarily undertaken by its States Members at the conclusion of the World War to the shoulders of smaller groups is to destroy the value and utility of the collective system.

Collectivity in every sphere of human society implies that the maximum weight of public opinion, not the minimum, the greatest moral pressure, not the least, is brought to bear upon the aggressor and the defaulter. In the political structure of every national State these are reinforced by military, financial and

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continued their discussions, and on 14th March it was reported that they had achieved some progress. On 16th March the meeting of the League Council on the 14th was reported, and for the next four days *The Times* contained reports of the negotiations between the Council and Germany. However, on 20th March, when the Council's adoption of the Franco-Belgian resolution was reported, there appeared the news that the Locarno Powers, other than Germany, had reached a draft agreement providing for the reference to The Hague Court of the dispute regarding the Franco-Soviet Treaty, for the creation of a temporary international zone on the Franco-German frontier, and for eventual general negotiations. On 21st March it was reported that the League Council had met privately to take note of the Plan of the Locarno Powers, and that the Polish Foreign Minister had argued strongly against the presentation of European proposals by a restricted group of Powers.

economic coercion, organised as a policing instrument. It follows that the same principle should be applied in the international community if it is intended that the rule of law should prevail. The more powerful and numerous the States who engage in this enterprise, the more potent and successful it will become. But if, in a fit of despondency, or cowardice, this system is discarded and, as a sop, regional arrangements are substituted in its place, we may be certain that the League is steadily slipping back down the slippery slope which eighteen years ago it climbed at the cost of so much blood and suffering to all.

Vital  
Interests.

At this point we cannot refrain from asking what are the vital interests which affect those nations in the danger zones about which, presumably, they are to be allowed to fight, if they cannot reach a settlement by conciliation or negotiation. No one has yet succeeded in defining vital interests : they may mean everything or nothing. Dictators and war-mongers can make them mean anything. But in the modern world, at any rate in Europe, there is one vital interest which transcends all others, and is common to all nations. This is the prevention of war, because it is difficult to imagine any national interest which is of such vital importance that it can best be served by a resort to war. This is proved by the results of the World War, as a distinguished soldier, Lord Allenby, has reminded us in the following words :

“ In the end, war is not a satisfactory method of settling disputes. Ordeal by battle brings lasting benefit to neither combatant. . . .

“ Wars have been usually waged—in olden

days—for the spoils of victory ; increase of territory, acquisition of wealth ; even glory to the victor. That lust for expansion is not yet quite dead ; but the glory of conquest is departing ; its gains are Dead Sea fruit ; its legacy, revengeful memories alone ; hardening hearts, perpetuating anger, and leading on to the dreary round of renewed wars.”<sup>1</sup>

We all realise that the results of the next war will be still more devastating. Consequently the vital and common interest is peace, a just and righteous peace which, as we have seen, can only be secured by the intervention of justice or equity, backed by superior force. Is equity more likely to be sought after and administered in the danger zone, or within the circle of the League ? Are the disinterested third parties more likely to be found in the former or the latter ? Will the forces and resources at the disposal of zone members confer upon their sanctionist instrument, whatever it may be, the superiority which will deter the potential aggressor from challenging the authority of these regional arrangements ? The trouble about danger zones is that the danger is apt to spread and to become an epidemic. The European powder-magazine may blow up anywhere, regional pacts or not. Twenty-two years ago it was ignited at Sarajevo, and on that occasion our Foreign Secretary, Sir Edward Grey, said :

“ Between Serbia and Austria, I felt no title to intervene, but as soon as the question became one between Austria and Russia, it was a ques-

<sup>1</sup> *Allenby's Last Message*, published by the New Commonwealth Society, London, 1926, p. 5.



tion of the peace of Europe, in which we must all take a hand.”<sup>1</sup>

The vital interests of Austria and Serbia were centred in Sarajevo. But Germany and Russia had vital interests in Austria and Serbia respectively. The vital interests of France and Belgium were linked up with those of Russia. It followed that the peace of Europe was involved and, with it, the fate of Great Britain. Consequently, if it is a question of risks, the greater risk is the risk of the regional pact and the danger zone, the lesser hazard is the hazard of the Covenant and the League.

No one has put this point more convincingly than the Chancellor of the Exchequer in a speech in the House of Commons on 7th March when he said :

“ You cannot divide peace in Europe. Under the League, we are interested just as much in the preservation of peace in the East of Europe as we are in the West, and our obligations under the League will apply equally whether aggression takes place on the Eastern or Western parts of Europe.”<sup>2</sup>

Con-  
sequences.

No human institutions have ever yet worked with clock-like regularity and precision. Why should we expect the League to be an exception? From the experience of past failures there are lessons to be learnt and applied in the future which will obviate new disasters. At the first obstacle, however, the

<sup>1</sup> Sir E. Grey to Sir H. Rumbold, 25th July, 1914 : *British Documents on the Origins of the War*, Vol. XI, pp. 88-89.

<sup>2</sup> Hansard, Parliamentary Debates, House of Commons, Vol. 310, Col. 1545.

British Government has apparently thrown up the sponge and retired from the ring. What an example to the rest of the world ! How can a British citizen ever hold up his head again at Geneva ? What becomes of " the keystone of British foreign policy " and of " the Covenant in its entirety " ? The keystone myth has been exploded. It may have served its purpose at elections ; now it must be relegated to obscurity. Mussolini has apparently smashed the Covenant in its entirety, and his henchmen—the defeatists of British foreign policy to be found in the ranks of all Parties—seem to be particularly pleased with the result. However, we have not yet reached the end of the journey, and he who laughs last laughs best ; or perhaps there will be no laugh at all, only a smile on the face of the tiger !

At the moment, the people of Great Britain are profoundly disappointed and chagrined. Their first impulse is to put all the blame on France, forgetting that the policy formerly pursued by successive British Governments since 1920 is largely responsible for the humiliation of the Emperor of Abyssinia, the members of the League and ourselves. When they have reflected, they may realise that the true remedy is to strengthen not to scrap the collective system, and to endow it with those institutions through which their hopes and aspirations for the prevention of war can most effectively be realised.

In the foregoing chapters we have attempted to show that the conclusion to be drawn from the lessons of the Italo-Abyssinian conflict is the necessity for a revitalised and remodelled League. The existing

Con-  
clusion.

institution at Geneva cannot survive in its present form, because it does not possess the organs through which it can effectively function. The seed of federalism planted at the conclusion of the World War must either develop or perish. There must be either a drastic pooling of sovereignty, or a return to splendid isolation adulterated by military alliances. And if adaptation is the secret of existence, it will be necessary to adapt, not to limit, the powers and functions of the League in such a way as will enable it to vindicate the rule of law. Moreover, we must recognise the failures of the past in order to prepare for the future. At this stage mutual recrimination will serve no useful purpose. It is idle to apportion the blame for past failures; all the Great Powers are involved to a greater or lesser degree. America for having deserted her offspring at the first opportunity; Great Britain for her obstinate refusal, until last October, to implement the provisions of Article 16 and her rejection of every proposal to organise and develop a system of sanctions; France, the erstwhile protagonist of this system, for the abandonment of her traditional policy and the moral support she has given to an aggressor nation; Germany for her defection from the League and her unilateral acts in the repudiation of treaties; Italy for her cynical violation of the Covenant and her wanton and barbarous attack upon a fellow-member of the League, whose claims to membership she had so warmly espoused a few short years ago.

Re-  
pentance.

Let us admit that we have all sinned and fallen short of those beneficent intentions embodied in the Covenant which inspired the heroism of our comrades

who fell in the World War and animated the peoples and their rulers at its conclusion. Obviously, this should be the season of repentance for all. Those who are not prepared to repent should not be included as members of a reformed and remodelled League. Better that it should perish than that it should become once more a cloak for the perpetration of injustice and aggression. But repentance cannot be regarded as genuine unless there are guarantees for future good behaviour. What are the guarantees?

First, the creation of a peaceful procedure for the settlement of all disputes and the revision of treaties. In default of a more satisfactory solution, an Equity Tribunal holds the field. The second guarantee is an International Police Force. If air power is the decisive factor, as the campaign in Abyssinia has proved, let Europe be equipped with an Air Police Force under the control and direction of a neutral authority, a reconstituted League. But, in order to provide the maximum deterrent effect, this force must possess superiority in numbers and equipment, in comparison with the national air force of any European State which refuses to join in the guarantee.

The  
Solution.

Excluding Russia, there are in Europe four Great Powers and twenty-three smaller Powers.

We have already seen<sup>1</sup> that under the *barème* formula these twenty-three smaller States at present contribute towards the maintenance of the League a sum equivalent to the contributions of the four Great Powers. Consequently, if all the existing States Members of the League in Europe are prepared to throw their combined weight into the scales, and

<sup>1</sup> See *ante*, Chap. VIII, pp. 102-4.

to contribute their appropriate quotas towards the equipment and maintenance of a European Air Police Force, then its superiority will be assured. Nothing short of a scheme drafted on these lines will suffice to restore the confidence of the smaller Powers in the integrity and good faith of the Great Powers, which has been so rudely shattered by recent events at Geneva. Nothing less will suffice to ensure that the guarantees are forthcoming and that the League will be endowed with that superiority of force which is essential for the establishment of the rule of law. It is, however, vital to the success of this plan that a substantial majority of the smaller European Powers should be prepared to make their appropriate contributions towards the creation and maintenance of such a force.

We are reminded that in order to construct the "best-protected city," Solon enjoined that every Athenian should become a policeman. To-day it is imperative that every European should become a potential international policeman, so that, in the words of Pascal :

"We must therefore put together Justice and Force : and so dispose things that whatsoever is just is mighty, and whatsoever is mighty is just."

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